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The Chicago law times

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THE

CHICAGO * LAW * TIMES

VOLUME I.

Edited by CATHARINE V. WAITE.

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THE CHICAGO LAW TIMES.

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THE CHICAGO LAW TIMES.

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SALMON PORTLAND CHASE.

Among the truly great names that have enriched our century, is that of Salmon P. Chase, teacher, lawyer, politician, statesman, financier and jurist.

He was born in Cornish, New Hampshire, Jan. 13, 1808, the son of a man descended from pilgrim stock, and of a woman from Scottish parentage, both religious, even to puritanism.

He was nephew to Bishop Philander Chase, of the Episcopal church, and on the early death of his father, went to Ohio to reside with him, and became a member of the Academy just established by the Bishop at Worthington. He was expected to work for his board, turning his ready hand to milk the cows, chop wood, work in the garden and assist about chores in general.

The Bishop was a somewhat stern man, deeming it his duty to subdue the sturdy wills of his students to his own indomitable purpose. If in their crude boyhood, his pupils feared him more than they loved him, in later years they regarded him with loving reverence.

Under the forming hand of his uncle, he became a devoted member of the Episcopal church, and his early diaries are full of earnest expressions of religious devotion. Indeed the tone of his mind was through his whole life deeply religious.

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While his father was still living, he had received a strong impression on the subject of intemperance which never left him. Walking along through a lane one morning, he found a neighbor who had gone to the village the evening previous, lying face downward in a shallow ditch into which he had stumbled while drunk. He was stark dead. The sight of this dead man made such an impression upon his sensitive mind that he never forgot the lesson, and in 1841 we find him making a strong protest against license in the city of Cincinnati.

After two years study with his uncle, he returned to New Hampshire and entered Dartmouth College, teaching school in winter, and boarding round, to eke out his scanty means.

At eighteen, he graduated with a fair standing, though like Webster, he had given more time to general reading than most young students. Soon after graduating, he turned his face to Washington, D. C., intending to establish an academy there which might prove a means of support while he prepared for the sterner duties of life. His prospectus was sent out, and he waited till his courage forsook him for the scholars that were to make up his school. In his despair, he went to his uncle, Dudly Chase, then a Senator from Vermont, and entreated him to secure him a clerkship in one of the departments. This uncle looked him over and made this sensible reply; "I once got a clerkship for a nephew, and it was his ruin. I will give you fifty cents with which to buy a spade and you can go to work with it, but no more clerkships for any of my relatives."

His school ultimately succeeded, and among his pupils were the sons of William Wirt. He subsequently became a law pupil of the distinguished jurist, and an intimate friend of the family. Who can estimate the value of this association during these early years, giving direction to his principles and forming his manners after the noblest pattern.

In 1830 when he was barely twenty-two years old, we find him admitted to the Bar and preparing to settle in Cincinnati, Ohio.

He seems to have set himself to work with commendable industry, and his first important legal reputation was won by

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the compilation of the Statutes of Ohio, since known as Chase's Statutes, a work of great value to the profession in that state.

No other field could have been chosen where the peculiar characteristics of the young lawyer could have found such ample scope. There were at that time few men of any legal reputation, who could be induced to undertake the defence of a fugitive from slavery. It would have been counted a blot on his reputation. But Salmon P. Chase did not for a moment hesitate to do this, and he herein evinced a moral heroism that few men have shown either in word or deed.

"Then to side with truth is noble,
When we share her wretched crust
Ere her words bring fame and profit,
And 'tis prosperous to be just."

Doubtless the teachings of Wirt had left their influence, and the strong words of Jefferson, of whom he was a political disciple, thrilled his heart. In the strife that had become a sort of "Border Warfare" he took the position that slavery was purely a state institution, having no claim upon the general government either for sanction or support. This was looked upon as a bold position, for, though it "was not so nominated in the bond," it was at that day almost a universal concession that slavery had a right to claim the use of both the army and navy for its support.

He became a prominent member of the Anti-Slavery Convention held in Columbus in 1841, and thus identified himself with that movement.

When the anti-slavery sentiment had attained such proportions that it took on political existence under the name of the Liberty Party, he was present at the first convention, and took a very active part. So small a party of politicians might well have shrunk from the task before them. Their only hope was in combining with minorities for certain objects, and thus over-balancing majorities that were confident in their strength. However, the Liberty Party began to have accessions, and in 1848 Martin Van Buren and John Quincy Adams headed the Liberty Party or Free Soil ticket for President and Vice President. Over the convention that nominated these men as can-

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didates, Salmon P. Chase presided, giving dignity to its proceedings, and

"Sounding forth the trumpet
That should never call retreat."

The leaders had announced as their cardinal doctrine,

"NO FURTHER EXTENSION OF SLAVERY."

In 1849 occurred a most singular combination in the political conditions of Ohio. When the legislature assembled, there were an equal number of Whigs and Democrats in each house. There was, however, that balance of power which the advocates of freedom had foreseen. The county of Lorain had elected Dr. Norton S. Townshend, a Free Soil candidate, but formerly an adherent of the Whig party. In the Senate, the Cuyahoga district was represented by John F. Morse, also a Free Soiler. Day after day the House balloted for a speaker, and day by day, these sturdy men refused to vote unless they could make their own terms. These were, that the senator to be elected should be a man of pronounced Anti-Slavery tendencies. There was also a supreme judge to be chosen, and they stipulated that he should not be a man foresworn on the question of human rights.

The Whigs demanded most imperiously, that these colleagues who had hitherto voted with them, should yield, and give them the old conservative majority. The Democrats lay back, as it were, waiting their opportunity. After many days spent in balloting with the same results, the Democratic party pledged itself to the election of Chase as Senator, and Rufus Spaulding, of the Western Reserve, as Supreme Judge; he as well as Chase having had some previous affiliation with the Democratic party. Of course there were loud cries of "bargain and sale," but from this time, freedom was declared national and slavery sectional, by a champion worthy to be the first man in the senate who should fearlessly break his lance in this noble fray.

The Free Soilers also secured the abrogation of the Black Laws of the state. These had been passed at the instigation of the Legislature of Kentucky, which in a friendly way, had visited Columbus during the session of the Legislature, and

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were almost word for word the text of the National Fugitive Slave Bill passed in 1851. Well for the nation that one man stood "faithful among the faithless."

He saw the slave power over-riding and trampling down the most fundamental principles of the government, ignoring the right of trial by jury, and bribing the commissioners to find for the master.

The provisions of the National Fugitive Slave Bill were to this effect:

The claimant was authorized to pursue and seize fugitives, either upon a duly issued process or without process, where that could be done; and upon being taken before a court or commissioner, it became the duty of that officer to hear and determine the case in a summary manner, and upon satisfactory proof of the identity of the fugitive, and that the service or labor was really owing, to issue to the claimant a certificate setting forth the facts, and authorizing the claimant to use the force proper and necessary to remove the fugitive; this certificate to be final and conclusive in all respects. And in no trial or hearing under the act, was the testimony of the fugitive to be admitted in evidence.

Any person who should knowingly or willingly obstruct, hinder or prevent the arrest of a fugitive slave, or should aid or abet or assist a fugitive slave, directly or indirectly to escape, or who should harbor or conceal a fugitive slave, so as to prevent the discovery or arrest of such fugitive slave, after notice or knowledge that the person was a fugitive slave, was to be subject to a fine not exceeding one thousand dollars, and imprisonment not exceeding six months, and, moreover, was to forfeit and pay to the party losing the fugitive, by way of civil damages, the sum of one thousand dollars.

The fees of the commissioner were to be ten dollars where the finding was for the claimant, and five where in favor of the defendant, a convenient bribe for the commissioner. The slaveholder could call any freeman to aid him in his pursuit of his fugitives.

It was in his consistent opposition to this measure that his moral courage and thorough comprehension of the impending

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struggle were evinced by Chase as well as his true manliness.

While the bill was under discussion in the senate, he did not fail to point out how thoroughly it would over-ride the Constitution. He said with great indignation, "If the most ordinary controversy involving a contested claim for twenty dollars must be decided by a jury, a controversy involving the right of a man to his liberty, should have a similar trial," and he denied utterly the warrant under the constitution for such summary proceedings. When the vote was taken on the passage of that bill, Chase alone stood up, as it were on Mount Gerizim and pronounced the sublime "No," which shall thunder down the ages. What sufficient honor can posterity render to the man who thus dared to stand alone as the exponent of the purpose for which our government in the Providence of God, had been permitted to be established? There is no more sublime scene in the history of the American senate.

The commanding personal appearance of Mr. Chase, his dignified bearing, his Roman eloquence, gave character to the measures he advocated, and his unanswerable logic compelled the respect and admiration even of his enemies. He was a man worthy to stand up with Sumner, against the most subtle and dangerous enemies of freedom.

In 1855 he was elected Governor of Ohio, a remarkable triumph, not only for the man, but for the principles he had so early adopted and so consistently maintained through evil report and good report.

Not only did his administration prove a success, but it was immensely popular, and he was triumphantly re-elected; and, but for the fact that his opposition to slavery was so pronounced, and also that the claims of Seward were felt by the eastern wing of the party to be paramount, he might have been a formidable candidate for the Chicago nomination for the presidency in the place of Lincoln, who was regarded as more conservative upon this question.

On Lincoln's accession to the presidency, Chase was made Secretary of the Treasury, and as long as the greenback currency circulates among the people, we shall be familiar with

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his portraiture and shall feel the blessing of his skillful financiering. It is easy to criticise his methods as unwise and improvident in our present affluence of prosperity, when, if all the banks in the nation were to be wrecked, the bill-holder would be secure unless the government should be overthrown.

But those of us who remember the days of "wild cat" currency, when if our purses were full of bills at night, that we thought represented a certain value, we often woke in the morning to find them worthless, can better appreciate the services of this grand financier. Our eastern exchange was also a great tax on commerce. Mr. Chase was called to duty with a treasury representing a minus quantity, and in an emergency when large drafts were immediately made on the national resources. We had really had no national currency up to this time, the old United States Bank having no proper title to be so considered, but now, the very existence of the nation, depended upon some scheme that should make its credit available through a circulating medium.

The use of a currency by the government, based on its credit alone, in large quantities for the supply of its armies, which was not convertible into gold, had the disadvantage of inflating nominal values, and of greatly increasing rates of interest on loans, which had to be paid in gold. This became a source of much complaint. But what could have been done when there was little credit at home or abroad? Mr. Chase proposed raising large sums by taxes which Congress refused to sanction, and he was hence compelled to resort to a high tariff on imports, and to the issue of inconvertible paper, as well as to immense loans bearing a high rate of interest. But at that time, no other methods presented themselves to this man, compelled to "make bricks without straw."

The financiers of to-day, having the light of his experience by which to walk, can easily discern his mistakes. But do not let them forget that it was under his guiding hand that our present banking system came into being, and by making the currency just as solvent as the nation and without the ruinous exchange rates exacted by eastern correspondents, has, during the last thirty years, saved to the laborers and trades-

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men almost, if not quite, the full amount expended during the war. Our banking system is said by financiers to be the best in the world.

Near the close of Mr. Lincoln's first administration, Secretary Chase resigned, and was appointed Chief Justice of the Supreme Court. This was a fitting tribute to his great services to the nation, and properly rounded to completeness a magnificent career. But it gave him less enjoyment than the more active duties of his former life.

An amusing and characteristic circumstance occurred in reference to his nomination. Mr. Chase had bitter enemies as well as warm friends, and on the very morning of his nomination, a self-appointed delegation of his bitterest opponents from Ohio, called on President Lincoln to protest against his nomination. They admitted his great talents and learning, but sought to influence the president by betraying to him letters written by Chase in which he had criticised the president.

Mr. Lincoln read them and in his characteristic vein of humor remarked that if Chase had written harsh things about him, he had said harsh things against Mr. Chase which squared the account. With his own hand he wrote the nomination and sent it to the senate. Whatever their estrangement may have been, Mr. Lincoln's high sense of justice led him to say, "Of all the great men I have ever known, Chase is worth about one and a half of the best of them."

The impeachment trial of Andrew Johnson occurred under circumstances that required the utmost calmness and judicial impartiality. As the presiding officer of a court, many of its members wanting in the candor and nice propriety supposed to characterize so high a tribunal, and already pre-judging the accused, it required no small amount of dignity and poise to carry forward such a trial with proper considerateness for the feelings of the nation, and yet with perfect justice and strict legal accuracy. Chief Justice Chase, relying upon the calmer verdict of the people when fears for the national safety should have died away, moved along in his usual serene, undisturbed manner, neither assuming unjust authority, nor allowing his rights to be over-ridden. Even Sumner in the heat and frenzy

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of the time had said, "poor Chase." But he lived to say, "Mr. Chase's conduct during that trial is one of the noblest titles to fame."

As the vote of the presiding officer was not allowed except as a "casting vote," the Chief Justice was not called upon to decide the momentous question. But the case stands a monument to his judicial character.

Mr. Chase has been criticised as inconsistent in his legal tender decision, but his critics seem to have overlooked the fact that he never believed the legal tender law constitutional. Considering the emergency, he accepted it as a war measure and did not feel constrained to say more than was meet in regard to its passage, though he feared it might prove a menace of trouble for the future to adjust.

In the case of Hepburn v. Griswold it appeared on trial that the obligation was contracted prior to the passage of the legal tender act and that it also fell due before that became recognized as law, so that any decision on the case involving, as it did, a new currency, might be considered in a sense, *ex post facto*. It was however made a test case with regard to the legal tenders, and as such was carried up to the Supreme Court in 1867, and re-argued in December, 1868. It was very carefully considered, and after a year's delay was in 1869 decided against the constitutionality of the legal tender, Associate Justices Nelson, Clifford, Grier and Field, concurring with the Chief Justice; Swayne and Davis dissenting.

We have not space here to even consider the grounds of the first decision, nor the reversal by a subsequent court. But it must be borne in mind by those who accuse Mr. Chase of inconsistency, that in no report made by him to Congress, was the expedient of making the notes of the United States a legal tender suggested. To Thaddeus Stephens the measure should be accredited.

In the eulogy on Mr. Chase pronounced by Wm. M. Evarts at Dartmouth, alluding to his career as Chief Justice, he says, "When Mr. Chase was called to this station, he found the bench filled with men of mark and credit, and his accession made an exactly equal division of the court between the old

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and the new politics. In these circumstances the proper maintenance of the traditional relation of the Chief Justice to the Court, was of much importance to its unbroken authority with the public. That it was so maintained was apparent to observation, and Mr. Justice Clifford, speaking for the Court, has shown it in a most amiable light.

'Throughout his judicial career he always maintained that dignity of carriage and that calm, noble and unostentatious presence that uniformly characterized his manners and deportment in the social circle; and, in his intercourse with his brethren, his suggestions were always couched in friendly terms, and were never marred by severity or harshness.'

Mr. Evarts continues, "I feel no fear of dissent from the profession in saying that those who practiced in the circuit or in the Supreme Court while he presided, as well as the larger and widely diffused body of lawyers who give competent and responsible study to the reports, recognize the force of his reason, the clearness of his perceptions, the candor of his opinions, and the lucid rhetoric of his judgments, as assuring his rank with the eminent judges of our own and the mother country."

Among the generous deeds recorded of Mr. Chase is a benefaction of $10,000 to Wilberforce College near Zenia, Ohio, a worthy institution for the liberal education of colored youth, both male and female.

That Mr. Chase should, through his long and somewhat ambitious career have never departed from his early faith in the true intent of our government, to be one of securely guarantied freedom to all, marks the manliness and sincerity of his character. That he should have left the treasury of the nation poorer in purse than when he took up its responsibilities, handling billions without a penny sticking to his fingers, marks him a man of rare probity. That his judicial ermine was unstained through a trial the most remarkable our country has ever known, and amid political strifes most dangerous to the well being of the nation, exalts his reputation as a jurist beyond the bounds of ephemeral popularity, and renders his

"One of the few, the immortal names,
That were not born to die."

H. M. Tracy Cutler.

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THE LABOR QUESTION.*

A few days since, the writer received through the mail a copy of an open letter addressed to the members of the Union League Club of Chicago. The document begins with a copious extract from the often quoted letter of Macauley, in which he paints in such sombre colors the future of the American Republic; and then proceeds to point out certain indications that the predictions of the British statesman, or something worse, are even now in process of fulfillment The paper is well written and was read through with great interest, in the hope that the writer would suggest some practical cure or palliative for the evils so vividly portrayed.

It was presented, in the final page; and what do you th. it was? Patriotism—simply patriotism—or more explicitly, a revival of American patriotism. Naturally enough the cynical definition of Dr Johnson occurs to the mind. Patriotism, the last resort of a rascal. Certainly no other cloak was ever so convenient for political tricksters and demagogues of all sorts and colors.

But suppose we could have a revival of the genuine sort, the simon pure article; would it save us—the mere sentiment of love for country? That may take on any form of expression. Jay Gould loves his country, undoubtedly—as the shark loves the small fry that play around him. Why should ne not love it? Consider the amount of interest he has in it.

*Read before the Grant Club in Chicago, July 10, 1886, by Henry Booth, LL., D. By a resolution then adopted a copy was requested for publication. In compliance with that request the paper is now submitted to the public.

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Is there any other country on earth affording so broad a field for the display of his peculiar genius? But is his patriotism likely to be of much service to the country at large? We have many similar patriots. Will they save us?

We want honesty, old fashioned honesty, methinks, a thousand fold more than patriotism. A *revival* of honesty, if you please, the honesty that will bear a steady even hand, and deal out justice with absolute impartiality to all classes and conditions; justice according to law, always, of course; but the the law must be according to justice. Such a revival would help us.

To make the law accord with justice in the first place, and next, to secure its impartial administration, are the things needed above all else. If there is honesty and intelligence enough for this, we are saved, otherwise, lost.

Among human institutions, and conditions there is no disturbing element that operates so persistently; and so perpetually, as a deeply seated sense of injustice. While it is the standing disgrace of human nature that injustice is constantly done both under the sanction of law and in violation thereof, it is equally to the credit of human nature that it will not, cannot rest when distinctly conscious of wrong and injustice, inflicted or suffered. We want no better illustration of this than the controversy in regard to slavery, with all the various compromises and schemes devised for its perpetuation. Does a question arise, disturbing the peace and quiet of the Commonwealth? Settle it on principles of eternal right and justice, and it will probably stay settled. Patch up a compromise on any other ground, and your work will prove a wretched makeshift, tumbling to pieces when subjected to the first strain.

No one will question that the industrial condition of the American people has been seriously disturbed during the early part of the present season; nor has this been the first time of recent date; nor is the feeling in business circles one of absolute quiet and confidence even now. Far from it. These experiences are comparatively novel. Heretofore, we have not been used to them. We have been accustomed to regard them as something distant, troubles indigenous to foreign soil, the fungus of old

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decaying European communities. We could contemplate the clouds in the distant horizon, hear the low mutterings of the thunder with composure. Those lightning flashes, the pent up fury of that tempest might involve others, not us Let them have a care. Now the storm is here, and already there have been ominous, premonitory cloud-bursts.

What are we to think of these labor troubles? Are we to regard them as mere riffles on the surface of our industrial affairs, having no deeper significance than the temporary caprice of the laboring classes, which will shortly pass away of their own accord, leaving the former harmony between labor and capital to resume its sway? These troubles, on the contrary are world wide, deeply seated, indicating a cause nearly universal. It seems to be the opinion of the most sagacious among our business men that these troubles have come to stay; that we may as well make up our minds to consider them henceforth the necessary accompaniments of our industrial and political conditions, until a cure shall be discovered and applied. And in searching out a cure in this case as in all others, we must first gain a clear conception of the cause.

Everything in this world is in a state of perpetual flux and change. There is nothing absolutely permanent. The earth itself has reached its present stage of development by the process of evolution, a process still going on. What is true of the material world, is equally true of human society, the world of mankind. And as the chronicles of our globe show that the evolutionary processes are marked by greater activity at some periods than others, even so of human society, and what may be called the necessary or involuntary movements of the race. To mark the trend of these movements, to study and endeavor to fully comprehend them, to mold institutions and adapt legislation so as to meet the requirements of these ever changing conditions, is the task of the sound political economist and wise legislator.

Now in what respect have the industrial conditions of the world undergone the greatest change within the last fifty years, a period so marked with changes? It is scarcely necessary to say that it is in the production of *labor-saving* machinery; of those wonderful contrivances of human skill and ingenuity,

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whereby man has been able to lay hold on the forces of nature, more especially steam and electricity, put them in harness and compel him to do his work. It is right here that the process of evolution in our time has been so rapid as to work a *revolution* in human affairs.

We are in midst of this revolution to-day, whether conscious of it or not, and it behooves us to mark well its passing phenomena. It has happened more than once in the world's history, that a revolution has taken firm hold and become an accomplished fact, before those chiefly interested were fully aware.

It is not easy for those who have lived through this period to realize by the aid of memory how great are the changes that have taken place; while those who must rely upon recitals aided by imagination, will find it still more difficult to comprehend them. Fifty years ago there were no railroads. Many of us can recollect the building of the first railroad in the United States. Steam navigation was then confined to the Hudson, Long Island Sound, and to short trips between some of the Atlantic ports. It was not until many years later that a steamer ventured across the Ocean.

The electric telegraph followed years after on the track of the locomotive and in the wake of the steamer. Previous to this, the post-man, stage-coach, and the Ocean clipper supplied our facilities for rapid travel and the transmission of news. Fifty years ago we had no manufactures in this country worthy of mention. Consequently there were no conflicts between labor and capital. These terms were not then mentioned in contradistinction from, still less in antagonism to, each other. The laborer was a capitalist, and the capitalist, for the most part, a laborer. Great manufacturing centers, with their crowds of operatives, their strikes, their lockouts and boycotts, were things unknown. It was the age of home spun. The farmer raised the flax and sheared the fleece from which with the aid perhaps of a simple carding-machine and fulling mill in the neighborhood, his wife and daughters spun, wove and manufactured the cloth with which the family were clothed. There was work enough for all; and though the wages were

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low, they were sufficient to enable the willing worker to procure the necessaries and most of the comforts of life as measured by the simple standard of the times. Those extreme contrasts in the conditions of men now visible did not then exist. There were no millionaires and few beggars.

Consider now the improvements introduced during this period in the means and appliances which man has devised wherewith to do his work. From the simplest tools in common use to the most complicated machine, whereby man has contrived to make matter do everything but think, and has even dispensed with the necessity for doing that, the triumphs of human skill have been most marvellous. The workman of to-day would smile with contempt at the gimlet, the auger, the axe, the hoe, with which our fathers managed to perform their tasks; and innumerable little tools of all sorts now cover the work bench of the craftsman and aid his operations which were then unknown.

On the farm too, consider what inventive genius has accomplished, since the time when the sward was broken with no better implement than a clumsy wooden plow with an iron point, when the crop was planted and cultivated by hand with the use of an equally clumsy hoe, when the harvest was gathered with the sickle, scythe, or that marvel of modern improvement, as then considered, the grain cradle; when the wheat, rye, oats and barley were threshed out with the hand flail, and winnowed out by tossing up to the breeze in a fan.

From the minutest operation to the greatest, the construction of the mechanism of a watch, the manufacture of that necessary article of the ladies toilet, the common pin, to the construction of the most ponderous engines for propelling ocean steamers and steel-plated men of war, every where the ingenuity of man has achieved its triumphs. Time was, and not long since, when in English work shops it required the successive manipulations of a dozen men to finish a brass pin. Now a single machine managed by one woman produces a better article with far greater rapidity, while another machine sticks the pins into their papers with more regularity than could possibly be done by hand, and folds them for the market.

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Searcely more than fifty years ago the iron nails used by the carpenter were slowly hammered out, pointed and headed, each separately, by the smith on his anvil. Consider how the cost of building was cheapened by the invention whereby nails are manufactured by machine faster than one can count. Consider how the gang plow with its polished steel blade, the cultivator, numerous seeding-machines, mowers, reapers and binders, threshing-machines with their attachments, and the numerous other inventions and improvements in the line of agricultural implements, have supplemented or superseded mere manual labor in conducting the operations of the farm. Consider, too, how many men and teams would be required to do the work of transportation now done by the iron-horse on the hundred and twenty thousand miles of railway traversing and intersecting our country in all directions.

Without proceeding farther to multiply examples, it will be safe to affirm that the efficiency of human labor, including the whole range of industrial pursuits, has been fully quadrupled by labor-saving machinery within the last fifty years; while at the same time numerous achievements have been accomplished which would have been impossible without such machinery. In making these statements, exactness in the matter of dates is not attempted, since not necessary to the argument. Now how does all this affect the condition of the laborer?

Of course, the benefits of cheapened production and consequent reduced prices of various commodities, the laborer shares in common with other consumers—shares too the tendency to extravagance and waste which cheapness always induces. Labor-saving machinery has also opened new avenues to employment, in the construction of the machinery as well as in its management; and in some instances, though not in all cases, by elevating the operative from a common laborer to a skilled workman, has thus improved his condition

Our railways furnish employment directly or indirectly to a vast army of workmen; in grading the road bed and keeping it in order, cutting and supplying ties, digging ore and coal, and manufacturing iron for rails and rolling stock, building engines, cars and coaches, and the numberless other employ-

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ments of all grades necessary in conducting their operations. Labor-saving machinery has accelerated all the movements of our modern life. How long, think you, would it have taken to build a city like Chicago before the era of steam and the telegraph? Would one century, would two centuries have sufficed for such a work? With the aid of labor-saving machinery, gigantic enterprizes are now undertaken and carried through to success, which otherwise would never have been dreamed of. The scope of human endeavor and achievement has been vastly enlarged and extended thereby in all directions. And the machine however perfect in its functions must still be supplimented by human labor and supervision.

But after making all due allowance for the instances, ways and modes in which the machine works with and for the laborer, the net result is still vastly in favor of the capitalist. On the one hand, the laborer sees in the machine, a remorseless rival, operated by the tireless forces of nature, taking away from him the accustomed task whereby he earned bread for his family, conscious that competition with such a rival must be hopeless. On the other hand the employer sees in the same machine an obedient servant, which will neither strike for an increase of wages nor rise in mutiny in case of a lockout. While these inventions have opened new lines and avenues of employment, they have done so in no degree proportioned to those they have taken away or closed. The term *labor-saving* machinery is not a misnomer, but conveys the correct idea. It means machinery which saves labor, or dispenses with the services of the laborer.

This, then, is the revolution which we are called upon to face; and these, briefly indicated or outlined, are the causes that have brought it about. And these causes, it should be borne in mind, are cumulative in their operation. One invention paves the way for another. Numberless operations of our daily life, now performed slowly and painfully by hand, hereafter will be done by machines. Even now the busy brain of the inventor is at work on the problem. Revolutions are said never to go backward; this least of all. The applications of steam to the work of man are by no means exhausted, and the

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uses of electricity are beginning only to be comprehended. What may we not expect when that mighty force which pervades all nature, shall be subjected to the control of man and taught to do his bidding?

Now what are we to expect of the ordinary workman, who has only what is significantly called unskilled labor of his hands to offer for food, clothing and shelter for himself and family? Shall he stand idly by, while the machine does the work by which he formerly earned his scanty wages?

The writer is acquainted with a machanic now employed by a manufacturing firm in this city, who by a machine of his own invention, with the aid of a small boy, does the work for which his employers were accustomed to pay $140, per week, in wages to ten men; doing the work much better than they could do it. He has done this for many months without any increase of his own former wages of fifteen dollars per week. The machine cost a few hundred dollars only, and the wear is too trifling to be taken into the account. Whether the public in this case will derive any benefit from this cheapening of the cost of production remains to be seen. Up to the present time, the profit has been wholly with the employers. But the point of the illustration is this: Here is an ingenious mechanic who by a clever invention of his own, does the work of ten, thereby turning nine of his fellow workmen out of employment. What shall they do? Seek employment elsewhere, is the answer. Yes, in some other line of business for which they are very likely unfitted, which they must learn anew, and which is already perhaps over-crowded. An old problem, is the ready rejoinder of the *laissez faire* disciple; the law of demand and supply has solved it a thousand times and will again. Let us see. The demand is for machines—more machines. The supply is of men—men who must be fed, clothed and sheltered, who have families to support. Or, to state the case with more strict accuracy, the demand is for labor, simply labor. The employer cares not how or whence the supply comes, only it must be cheap and adequate to the work.

Here then, are two classes of agents, men and machines, each ready to furnish the supply and do the work. The employer

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prefers the latter. Why? Because the machine can do his work more cheaply, and perhaps better; because it never complains, justly or otherwise, of ill treatment; and in obedience to the apostolic injunction is always "content with its wages." He prefers the machine, too, because in that case he *owns his laborer.* From the earliest times, from the building of the Pyramids down to the present, capital has always aspired to the exercise, in some form and to some extent, of a proprietary right over the laborer in its employment. Hence slavery and peonage; and when these are prohibited by law, hence the various restrictions and conditions imposed by the employer in the form of forced contracts or rules of business, within the pale of law, whereby he seeks to control the natural liberty of the employe and subject him to the condition of a mere thing, designed primarily for the use of the employer.

When it has come to this, that three-fourths of all the labor of the civilized world is done by machines, it is apparent that human labor must be regarded as something more than a mere commodity in market, governed by the law of demand and supply, if manhood and womanhood are to count for any thing in the solution of this great problem. Man or woman is still something more and better than a machine. The machine, the offspring of the inventive human brain, must not drive its creator to the wall. There may have been poetic justice in the sentence that condemned the inventor of the guillotine to perish by "his own bloody instructions." Not so of those whose useful inventions have enriched the world and laid the foundations of our present civilization with all its grand possibilities of the future. The discoveries of the great inventors of the past, Watts, Fulton, Stevenson, Arkwright, Morse and a host of others, have become the inheritance of mankind. The creations of their genius should no more be allowed to become the subjects of monopoly than the forces of nature which they taught us how to use. All men must be partakers of the rich legacies they have bequeathed, in just proportion.

This, then, is the great problem; to make such an adjustment in the relations of the capitalist and the laborer, that the latter may enjoy his fair proportion of the benefits which

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the progress of invention has bestowed. It will not do for the former to say to the latter, "I have a machine now which does my work better and more cheaply than you can do it. See how well it works. Go your way, I have no more need of you." The laborer will not submit to be thus summarily dismissed; and he ought not to submit. There is justice in his demand, and the sooner it is recognized the better for all concerned.

This problem is the most vital and pressing of the time, demanding a speedy solution. Owing to the causes indicated, the percentage of the unemployed among our laboring population increases year by year. The uncertainty of employment becomes more and more a source of anxiety to the worker in estimating the chances of support for himself and family. The gulf between capital and labor grows broader and deeper. The discontent of the laboring classes is on the increase. Two causes, chiefly, conspire to this result; their own hopeless poverty on the one hand, hopeless so far as the masses are concerned, and the vast accumulations of wealth apparent in the hands of the capitalists on the other. The laboring masses are not blind to these enormous fortunes, ostentatiously displayed in palatial mansions, costly equipage and sumptuous apparel, flaunted before them as if to mock their own mean surroundings and pinching needs. Whence have come these great fortunes, they ask; and the answer is not at all satisfactory. Estates which in the old world have required generations and even centuries with the aid of entailment laws, to build up, here have been the work of a decade only. At no other period in history and under no previous conditions, would such rapid production of wealth have been possible. A country of boundless material resources has furnished the field, and an age of invention, of steam and electricity, the means and opportunities. Thus in democratic America, during the life of a generation still on the stage of action, fortunes have been amassed which rival the fabulous wealth of the Rothschilds, to which the necessities of every government in Europe for more than a century have furnished contributions. Only the great conquerors of former times, who despoiled cities, plundered provinces and nations of their

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wealth, could boast of such riches as have come into the hands of the railroad magnates of our day. Fraud, corruption, wholesale bribery of government officials, congress, and legislative bodies, state and municipal, seem to have taken the place of force; and we have learned how a great nation may be quietly robbed of its wealth by millions of dollars with impunity and success. If there is less glory in the new method, there is also apparently less danger.

There has also been a rapid accumulation of great fortunes through what are deemed the legitimate channels of commerce, trade, manufactures and speculation, quite unparalleled in any former age.

Some of the more elderly among us, can well remember the time when there were only two reputed millionaires in the United States. These were John Jacob Astor of New York, and Stephen Girard of Philadelphia. There may have been others, but these only were so reputed. Now there are said to be more than seventy of the class in Chicago; some of whom compute their wealth at many millions. There are twenty or more in the United States Senate.

When this fact comes home to the working classes in their squalid tenements, they resent it as well they may; for they know well that it bodes no good to them. How has it come about that there are twenty men of such vast wealth in the upper house of our national legislature? Is this a rich man's government? In what way did these politicians accumulate such wealth?

It will not do to try to silence these murmurs of discontent by showing the laborer that his condition is better than it was a century ago. It ought to be a great deal better. Have not his muscle and intelligent brain contributed their full share to the improved conditions that have made life in our day better worth living than it formerly was? Nor will it do to declaim against the shiftlessness, intemperance and extravagance of the working classes. That these faults exist to a lamentable extent, thereby intensifying the sufferings of the poor, will not be denied. But what are they, what can they be as compared with the foolish waste and extravagance of the rich? No such

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considerations should be entertained for a moment in opposition to a just demand.

The socialistic demagogue tells the laborer that "capital is stolen wages." This is one of the prime articles of his creed.

A half truth is often more pernicious than an out and out falsehood. The apothegm of the socialist is of this character. It gives him colorable cause for asserting that *all* capital is stolen wages, thus intensifying the antagonism between labor and capital. The assertion must be admitted to be a half truth. Much of the capital in the hands now holding it, is stolen wages, in the sense intended by the socialist leaders. No man ever earned a million dollars. There is a propriety in the use of speech always observed in the premises. We say that a man has *accumulated, or amassed* a great fortune; never that he has *earned* it. If a man has accumulated a million dollars or any thing like that amount, it is proof positive that he has managed to get into his possession a great deal more than his share of the earnings of the social hive. To produce wealth in any of the forms usually seen, amounting to a million dollars must require what is equivalent to the life-long labors of many men; and if one man succeeds in appropriating the earnings of others to that amount, in whatever way, many must for that cause, be, and remain poor. Extreme poverty of the many is the necessary complement of great riches in the hands of the few. This is invariably, and unalterably true the world over.

There is no necessity for such deep contrasts between wealth and poverty here; yet they are becoming yearly a more marked feature of our social condition. It is the peculiar disgrace of our civilization that we are reproducing in this republic some of the very worst features of caste distinction of the Old World, distinction based on wealth, with none of the excuses that can be offered for their existence there.

No wonder that with these facts in plain view the laborer becomes restive and discontented. No wonder that with the abyss of poverty before him, and the prospect of sinking lower and lower in the social scale with scarce a possibility of retrieving his situation, he regards the capitalist with envy and resentment.

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There is a remedy for this, a mode of bridging over the gulf between the two classes. It only requires the application of the plainest principles of justice and fair play. The laborer must be admitted to a participation jointly with the capitalist in the benefits of labor-saving machinery, so that when nature's forces do the work the profit shall enure to the benefit of both classes in just proportion. This can be brought about by co-operation or by some form of partnership between the two parties. Of course, practical difficulties will occur in the details of any plan suggested; but they are not insurmountable. Will this be done? Obviously it is for the capitalist to take the initiative. The appeal is not solely or primarily to his liberality but to his justice. Would not the general prosperity, the elevation in the social scale of those who perform the hard tasks and make smooth the rough ways over which our civilization is carried forward, together with the satisfaction of living in a happy and contented community, more than compensate for any apparent sacrifice necessary to produce this result?

The laborer is more and more driven to the wall, and although he has this season demonstrated his power mightily to disturb the industrial conditions of the world, turn back the tide of its prosperity, and if maddened to desperation, perhaps even shake the pillars of the state, yet within the pale of the law, capital holds him in its firm grasp. But it will not be prudent, wise, humane or just to force upon him the "necessity that knows no law."

This subject should be carefully studied by the capitalist. He will find at the bottom of these labor troubles, a deep and abiding sense of wrong and injustice. So long as this remains, there can be no true peace or cordiality. Let there be justice between the two and peace and prosperity will follow.

Whether these wrongs and evils can be alleviated by legislation and if so to what extent, may be the subject of a future paper.

Henry Booth.

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WOMEN JURORS.

In May of 1884, I arrived in Seattle, Washington Territory, the last stage of a two-months, trans-continental trip, full of curiosity concerning many things in the life of that far, new western civilization, but with a more eager interest, naturally enough, on the "woman question" than any other. For just six months before, the territorial legislature had passed, and the territorial Governor had approved, the law by which one little word was stricken out from the statute defining the qualifications of electors, which therefore, from having read "all American male citizens above the age of twenty-one years," etc., now read "all American citizens above the age," etc.; while an additional section put the matter beyond doubt by affirmatively declaring that "wherever the word 'his' occurs in the chapter aforesaid, it shall be construed to mean his or her, as the case may be."

I had already spent two or three weeks in the eastern part of that great territory which the Cascade mountains divide in two, and had heard various opinions, and rumors more or less vague concerning the new law, but for anything definite about it and its workings, was continually referred to the Puget Sound country, which, I was assured, was the home of the new movement. In Eastern Washington there had been no elections since the passage of the law, and though court was in session in Walla Walla when I was in that city, there were no women serving as jurors. No practical action, therefore, had been yet taken under the new law, and while politicians and voters of the time-honored sex were cautiously reluctant to ex-

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press opinions, the greater number of the newly-made voters whom I met expressed themselves, as do so many of their sisters east of the Mississippi either as quite indifferent on the subject, or as determined to take no part or action in the matter whatever. One gentleman in Spokane Falls indeed, who seemed rather misanthropical concerning the political machine, told me that the law giving suffrage to women had been passed in Washington Territory by an accident,—or rather, as the result of the wily scheming of certain friends of the movement in the legislature, who were themselves quite astonished at their own success. The great question of the session with representatives from the eastern half of the territory, he said, was the division of Spokane county (if I remember rightly), to accomplish which they were ready to pledge themselves to almost anything not too absolutely wicked. So when those wily schemers from the West approached these innocent legislators from the East with the offer of votes for county division in exchange for votes for woman suffrage, it seemed a most tempting offer, whereby they from the East would carry through their pet scheme, while they from the West would accomplish nothing; for weren't legislatures all over the country experimenting with that suffrage question every year, without anything serious ever coming of it? Of course, such a law as that would never be passed, and it was perfectly safe to vote for it! So vote for it they did, and to the amazement of everybody it *was* passed, and the Governor approved it!

That was what the man in the east told me, with somewhat elongated face, and I give it for what it is worth, which is probably not much. But he, as well as all others of whom I asked questions, referred me to the Puget Sound country.

"You're going to Seattle," they said, "and you'll see it there in full working order. Women are sitting on the grand and petit juries there. It must look queer enough, but that may be what we're coming to."

Well, I thought myself that it would look queer, and I further thought,—and was injudicious enough, moreover, to think out loud in a few instances,—that whatever might be the policy and the desirability of women's voting, it was carry-

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ing the matter a little too far to force them to do jury service. That wasn't practicable, and wasn't desirable from any point of view that I could see. I am ashamed to say that I formed and even expressed this opinion, without any very sound logical reasons behind it, but only on the spur of—prejudice, I suppose it was.

Prejudice indeed it must have been, and quite the most groundless prejudice that I ever indulged in, as I discovered before I had been in Seattle forty-eight hours.

It was the last week of court, and the first invitation I received in town was to go to the court-house,—an invitation which I very promptly accepted. And there, sitting in the usual two rows, against the wall to the left of the bench and the right of the bar, was the "mixed" jury, listening quietly and attentively to the evidence in the cause on trial, which was the prosecution of some poor wretch of a Chinaman for some petty offense, the nature of which I have forgotten. Five out of the twelve jurors were ladies. And ladies they were, too, in that curiously inexplicable sense of the term which no other word will quite express. Their faces and manner—their presence, in a word, showed them to be, without exception, cultivated, educated women of fine, delicate feminine instincts; the kind of women who make delightful homes, happy wives, and the best of mothers. And they were devoting themselves to the business before them with the same intelligent, conscientious care and attention that they had given for years to their domestic affairs within the four walls of home.

Again I am ashamed to admit that I was surprised. There was no earthly reason for surprise—no shadow of cause why I should have expected to see anything less than what I did see, —any other sort of women in the jury-box from those who sat there. Yet I had not expected just that, nor that they would be so quietly and entirely devoted to the business before them, quite as if it had been their daily occupation for life to sit in judgment of evidence produced for and against an unhappy Chinaman who either was or was not guilty of a petty misdemeanor.

And so I sat and stared for a while, until I became suddenly

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conscious that I myself, as a woman member of the bar in Massachusetts, was attracting quite as curious and interested attention from my Western brothers in the profession, as my sisters of the jury were receiving from me. Whereupon I tried to recover myself, and to appear as though nothing unusual were going on; and soon, at intermission, I was introduced to several prominent attorneys, ex-Governors and ex-Judges after the western fashion; to the presiding judge, Chief Justice Greene, one of the best of living men as well as an upright judge and a keen, well-read lawyer; and not least, a brief word of introduction was allowed to one or two of the women jurors as they filed past in the care of the woman bailiff to the jury-room.

Of course, I began asking questions as soon as I knew people of whom to ask, for I could not witness in silence so strange an innovation. To my surprise again,—you see I was in rather a chronic state of surprise in those days,—everybody with whom I spoke expressed themselves as much pleased with the workings of the new jury system. There was scarcely an exception to this rule, and even where an occasional individual was not enthusiastic in its favor, he did not speak against it, but contented himself with a cautious reticence. The lawyers were quite unanimous in their approval, many of them admitting that they had been utterly opposed to the innovation at first, but that their experience at the present term of court had quite converted them. They said they had never tried cases before more intelligent, clear-headed, quick-witted and reliable jurors than were those of the present panel. They could depend on the women every time!

So they said to me, and I am inclined to believe, on the whole, that not very much leeway need be given for policy, etc., in construing their words. Judge Greene told me, and has since made the same declaration many times in more public fashion, that never before in his ten or a dozen years on the bench of the territory, had he been able to get as satisfactory and reliable jury service as since mixed juries had been called.

One of the leading members of the bar of Seattle, and

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perhaps the most successful jury-lawyer of the territory, Judge John C. Haines, formerly of Chicago, gave me rather an amusing account of his first experience before a mixed jury.

He had been extremely opposed to the idea of the thing in the abstract, and when he undertook the defense of a man charged with manslaughter in an up-Sound town before the spring session of court in Seattle opened, and found that women had been summoned as jurors, he thought that the whole matter would be nothing more than a farce. Two of the women were among the jurors drawn into the jury-box and submitted for his inspection. He consulted with his client as to the best use to be made of peremptory challenges.

"We can't do better than to get rid of those women," he suggested.

"Hold on!" exclaimed the man in alarm, "you'll ruin us if you do that! Those two women are my wife's best friends. You can wind them round your finger."

So then attorney and client trembled lest the prosecution should challenge the women, but the questions put elicited nothing prejudicial to them, and they remained.

Then the lawyer went carefully to work to make sure of those two jury-women. His client's case was a pretty hard one, the facts being such that the indictment might about as well have been found for murder as manslaughter, and no means could be overlooked that might soften the hearts of the twelve judges of the evidence which must come out on the trial. For the ten men, therefore, he worked up the doctrine of self-defence; and he appealed to the sympathy of the two women, by having his client's wife and children in court through out the trial, crying their prettiest. He felt sure of the women! They would hang the jury, at least.

The twelve went out when the trial ended, and stayed out a long while. Occasionally bulletin reports came to the waiting attorney by some mysterious means, and they were always the same.

"They have taken another ballot, and they still stand ten to two!"

As the hours passed, he grew really proud of those two

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women who were so bravely holding out for the acquittal of the husband of their friend!

At last the jury filed wearily into the court-room long after the sun had set; the judge and attorneys were hastily summoned and the prisoner brought up from his dungeon, and the verdict was pronounced.

It was aquittal, bnt no thanks to the women, who had been too clear-sighted to be fooled by the self-defence theory which had caught their brother-jurors, and too conscientious to allow their pity for the wife to affect their judgment of the case. But finding themselves alone in their opinion that the prisoner was guilty, they yielded the point at last.

And this experience convinced the astonished lawyer that nothing but straight and square evidence could be made available with women jurors, and the last time I saw him, nearly a year later, he was still of the same mind.

It is certain that the women who did jury service in Seattle during the fall term of court were not swayed by their feelings, or sympathies, or prejudices, but were remarkably quick-sighted and keen-scented in sifting the wheat from the chaff of evidence, and as true as steel in their findings based thereon. I watched them very carefully, and quite constantly, for I was in court much of the time. If they failed in either direction, it was in sometimes being a trifle too logical, not allowing sweet pity to have its fair influence. One woman in particular, I remember, had the reputation among the lawyers of voting for a verdict of guilty every time, and when drawn she was peremptorily challenged in case after case. I may have been mistaken, but I have always credited her with hanging the jury in my first case in that fall term. They were out three hours—the longest three hours I ever passed—and though they came in at last with a verdict of acquittal, I believed the rumor which came to my ears that it was she who thought my Chinaman client to be guilty of the crime charged against him, whereas, as a matter of course, he was in reality quite innocent. I believed, and when I examined another set of jurors the following week on another case, my first peremptory challenge was expended on this lady, whom I did not dare trust again.

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There were lovely ladies on that jury panel however,—ladies to whom any one might gladly entrust the settlement of any question, civil or criminal, that must be carried into a court of justice at all. All manner of cases were presented to them, from murder to petit larceny, and complicated civil causes involving large sums of money, and requiring days, sometimes weeks, for their trial; but throughout the term these women were always faithful and staunch. Always in their place in the jury-seats, or in the court-room waiting to be drawn; never looking ill or fatigued in greater degree than did their brothers of the panel, and far more generally interested and awake to the situation, while in the occasional cases where a verdict could not be arrived at, they stayed the night out till weary dawn, and filed into court next morning somewhat dishevelled perhaps, but in quite as good condition as were the men. Better indeed than some of the latter, who felt themselves great sufferers in being deprived of the use of their favorite weed; for when women jurors came in, smoking jurors went out—or rather the cigars and pipes went out. Men found that they must be gentlemen in the jury-room as in the drawing-room.

One exception I must make to the statement that all class of matters came before the women jurors. There was one case tried in that term of court notoriously vile in its character, during which all the female jurors were excused from attendance by Judge Greene.

Some features of the new departure were sometimes slightly comical. One in particular that I remember was really very peculiar. When the jurors reported in attendance at the opening of the term, one among them, summoned from a distant point of the county, was a woman, somewhat lank in person and unfashionable in attire, who held by the hand a small boy, very round and rosy, of about three or four summers. It seemed that she had written a note to Judge Greene asking to be excused from serving, as there was no one in whose care she could leave her child, but had neglected to give her address fully enough to enable him to reply; so not being excused, she made her appearance, child and all. Nobody supposed she

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would be allowed to remain with that small incumbrance, but evidently the judge concluded to try the experiment, for he told her she might stay, which she was quite willing to do, and that if the child behaved well, she might keep him with her. So when she was drawn (which was frequently, and her genuine honesty must have made her rather a favorite with the bar, for I don't remember that she was once excused, either for cause or peremptorily) she always took the end chair of the back row of seats, and the round little boy took a tiny rocking-chair which the sheriff had kindly sent down from his own home, and here the little fellow would sit through the long hours, calmly rocking and sucking his thumb or looking at a picture-book, seldom sleeping, apparently attentive to what was going on, and never once troubling his mother or distracting her attention. He was certainly a marvelous child, and her explanation when I asked her the secret of his behavior one day, seemed to me no less marvelous.

"Why, I talk to him, when we are not in court, and tell him how important it is that I should pay attention to the lawyers and the witnesses, and how wrong it would be if he should disturb me."

One very striking and pitiful scene was presented when this lady and her little boy were on the jury, which I think I can never forget. A young woman from one of the back mining-districts was on trial charged with assault with intent to kill. The prosecuting witness was also a woman, but she was vile and ugly, while the prisoner was really beautiful and seemed entirely honest and good, but unfortunate in the associations into which her life as the wife and widow of a coal-miner had thrown her. The two women had been near neighbors, and the ugly one had been naturally jealous and spiteful towards the beautiful one. The stabbing affair was the climax of a complication of small disagreeabilities, and the prisoner claimed that her act was purely in self-defence, but as there was only one witness, and he a creature of the other woman's, the case seemed a difficult one at first.

But as I was saying, the woman with the child was drawn, and greatly to the delight of the attorney for the defense, (who,

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by-the-way, was the same Judge Haines whom I mentioned before) for once more he hoped to appeal to a woman's sympathy. The prisoner also had a little child, just about the age of the little jury-boy; one of the prettiest blue-eyed and flaxen-haired baby-girls that I ever saw, and she was with her mother through the entire trial, running about inside the bar making friends with the lawyers and officers of court, looking longingly up at the kind-faced judge, but not quite daring to mount the steps of the bench, and then returning to her frightened, black-robed mother, to fall asleep on her breast. The poor woman was certainly very greatly alarmed from first to last, and as her attorney said, it didn't seem possible that that jury-woman with her little one by her side, could help to find a verdict of guilty against that other woman with her little one in her arms.

How it might have been otherwise I cannot say, but as it turned out, the one witness of the affray proved worthless under cross-examination, and all the other testimony was in favor of the prisoner and against the prosecuting witness, so the jury returned almost immediately after being charged, with a verdict of acquittal.

Women served on the grand jury as well as the petit,—and still serve, for if I write in the past tense, it is only because I am calling up personal recollections for this sketch. When I first arrived in Seattle, the city had not recovered from the excitement into which it had been thrown by the first experience of a mixed grand jury which it—or the world, probably—had ever known. For years before, the better class of citizens had been trying to enforce the laws that stood on the statute-book for the regulation of the liquor-traffic, and the extermination of gambling and other evils. Judge Greene had repeatedly endeavored to awaken his grand juries to a sense of their responsibility and duty in this matter, but quite in vain; they would quietly let the subject drop, and rarely find an indictment. This had been the custom, and every grand jury followed it, till this new and strange one was called. They were ready to make their own precedents, and they did it by thoroughly examining every charge that was brought to their notice. They

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went in person at unexpected times and seasons to inspect suspicious premises, and summoned witnesses freely, and the result was a great batch of indictments, a number of arrests and verdicts of guilty, a decided emigration of gamblers and prostitutes out of the city, and a general purification of the moral atmosphere. People who should know, told me that the following summer there was not an establishment left in the city where unlawful gaming was carried on. Some said this with pleasure, and others with long faces and prophetic head-shakings; for it is a theory to which many honest people hold, that a young city in a new country cannot possible thrive without the money and business that is brought into the place by these "social scavengers" as they call them. To drive them out was to drive the city to the dickens very quickly. But the facts accomplished by the mixed jury were questioned by nobody.

As may be well imagined, all this new state of things was not accepted quietly and peaceably by those whose interests it menaced, and questions were raised in the district court where the trials on these indictments were had, as to the ability of married women to serve as grand jurors. The court decided in favor of their ability to do so, and appeal was taken therefrom to the Supreme Court. The same question was raised and appeal taken from the decision in Tacoma, Pierce County, as well. It chanced that my business associations made it necessary for me to aid in looking up the law and preparing the brief that was used by the attorneys for the Appellants, so that while my sympathies were on one side of the question, my work was done on the other, as sometimes must happen. The points involved were very nice ones, turning principally on the construction of the word "householder" in the statute prescribing the qualifications of jurors, which reads as follows:

"All qualified electors shall be competent to serve as petit jurors, and all qualified electors and householders shall be competent to serve as grand jurors." (Chap. 152, §2078 of the Code.)

Could married women, living with their husbands, be considered "householders" in the sense required for the proper con-

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struction of this statute?

The system of community property between married people prevails, being adapted from the California Code, but with many broadening modifications in the more liberal Territory. A statute passed shortly before the law giving suffrage to women, expressly abolished all laws which imposed or recognized civil disabilities upon a wife which were not equally imposed upon or recognized concerning a husband. Also the rights and responsibilities of parents, in absence of misconduct, are equal in the Territory, and the mother as fully entitled to the custody, control and earnings of her minor children as the father; and in case of the father's death the mother comes into as full and complete control of the children and their estate as the father does in case of the mother's death.

These and other laws go to show that the intention, or the tendency of intention on the part of the legislators of the Territory had been to put husband and wife on an exactly identical legal footing; but the question remained whether they did,—and even whether they could—make both parties to the marital union householders. As I have said, the judges presiding over the district courts in the two counties of King and Pierce decided in the affirmative, while other counties looked on, regarding these as test cases. I heard the appeal argued before the Supreme Court at Olympia. There are four judges in the Territory, and on appeal, the three who have not already passed on the question, hear and decide it. Two of the four were known to be in favor of the right of married women to serve as grand jurors. The third was thought to be shaky, and the fourth, a southern man who had just been appointed by President Arthur, was supposed to be unfavorable. So it proved, for Judge Turner gave a minority opinion contrary to that of the majority of the bench, which was favorable, the shaky third deciding to cast in his vote with those of two men of such acknowledged legal and judicial acumen as was possessed by the judges from Western Washington.

An appeal was taken from the decision to the United States Supreme Court, where I suppose it is still pending.

Meanwhile the question was locally settled, and women

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continue to serve on juries in Western Washington, where the judges refuse to receive a list of names from the county commissioners of citizens eligible as jurors, if they consist entirely of males. In Eastern Washington women have served as jurors to some extent, but I think not to the same general degree as west of the mountains.

Recently I saw by a Seattle paper that the question is very seriously mooted whether or not the entire statute giving women the right of suffrage is void, unless specially ratified by Congress, on account of its being without title, other than "an Act to amend section 3050, chapter 238 of the Code of Washington;" whereas it is required that all statutes shall be given a descriptive title. It was stated that a test case would probably be made up soon and carried to the United States Supreme Court. It was shortly before the July municipal election in Seattle that the article was published, and it may have been only coined for political purposes. There is much threatening every now and again by one political party or another, that unless the women voters do thus and so (that is, obey the party lash) they will find themselves disfranchised again before they know it. But they go quietly on just the same, voting according to the dictates of their own sweet wills, scratching tickets fearfully, choosing their candidates rather for personal worth than party principles, secure in the fact that it is far easier to enfranchise than to disfranchise. The point just referred to may, or may not, be well founded. I have no opportunity at this time to look into the question, even for my own satisfaction, but it would certainly be very interesting to see what view the black-gowned justices at Washington would hold on the matter, and what action Congress would take.

Lelia J. Robinson.

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The Office of Chancellor.

The office has existed from most remote antiquity. King Arthur, of almost fabulous fame, is said to have appointed a Chancellor.

In the early ages of the English government those who were wronged went to the King for redress, so that, as is reported in the "Knights of the Round-Table," the cry of all the people for justice passed through the great hall "where Arthur sat."

But as population increased, and causes became numerous, the King called to his aid the wisest of his advisers and he became his secretary or assistant, listening to complaints and framing them into due form. In time, fixed forms were adopted for all similar cases, and a place was named to which all such suitors could resort to obtain justice. This was the *officina justitia* called chancery, and the officer who presided over it was called a Chancellor. The other great branch of the pristine duties of the Chancellor was the necessary aid required by the King for conferring grants of dignities, of offices and of lands. It was necessary that these grants should be duly framed and authenticated by an officer well versed in the laws and customs of the kingdom, and this man was the Chancellor.

Such writs and grants were in early time verified merely by signature. The art of writing being but little known, seals became common; and the King, according to the fashion of the age, adopted a seal, with which writs and grants were sealed. This was the Great Seal, and the custody of it was given to the Chancellor. "Keeper of the King's Conscience," was one of the appellations of the Chancellor. This was from the fact that after the conversion of the Anglo-Saxons to Christianity by the preaching of St. Augustine, the King had always near his person a priest, to whom was intrusted the care of his chapel, and who was his confessor. This person was selected from the most learned men of his order, generally from among the hereditary barons. His functions were more political than judicial; he sometimes led armies to battle, and when the sovereign was beyond the sea, by virtue of his office, he, as regent, governed the realm.

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A DEFINITION OF LAW.

We are all well acquainted with the definition of law, in its more comprehensive sense, as given by the illustrious English commentator—"a rule of action."

This definition is perhaps, sufficiently complete. There is however a sense still somewhat broader in which the word is sometimes used. It is employed to express a mere relation. Thus we say it is a law in mechanics that the power of a lever is proportional to the distance from the fulcrum; in general mathematics, that it is an invariable law that the whole is greater than any of the parts, and in geometry, that the three angles of a triangle are equal to two right angles.

In its more limited sense, taking the term to mean that which is administered in the courts or municipal law, as it is called, the definition of the same learned jurist is more ingenious than explicit.

Law, he says, is that which is prescribed by the supreme power of a state commanding what is right, and prohibiting what is wrong. Query. Is that which is thus commanded, and that which is prohibited wrong because it is prohibited, or is there another standard of right and wrong to which the prescribed enactment must conform in order to have the force of law? The author of the definition has not been as explicit in answering this question as we could wish, though it may upon the whole be said that he has answered it in the latter alternative. Thus also has it been answered many times since by the highest judicial authorities, not only in those countries

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where there are written constitutions to which legislative enactments must conform, but in countries as well where there are no such constitutions.

Thus in the famous Somerset case, it was held by Lord Mansfield that slavery was contrary to the genius of the British Constitution, and contrary to the principles of right and justice which underlie the entire system of the common law and on that broad ground was it decided that slavery could not be maintained—that a slave could not breathe the free air of England. In America the courts have, in overriding legislative enactments, generally confined themselves to maintaining intact the various provisions of the federal and state constitutions and the principles of liberty and justice therein embodied. But there have not been wanting, cases which have been decided on still broader grounds, where the facts were of a nature not in those constitutions provided for.

Not only must legislative enactments conform to the fundamental principles of justice and right, but they must be in accord with the spirit of the age and the genius and moral sense of the people. So must the whole system of law; not only enactments but also constitutions and judicial decisions.

This fact may not at first be so manifest as the other; but a little reflection will serve to show its correctness. Constantly we see laws, constitutions and decisions changing to conform to the advanced intellectual and moral condition of the people.

A notable illustration of this may be seen in the Dred Scott case. Though this was a decision of the highest tribunal of the land it could not stand as law, because it violated the moral sense of the nation. An appeal was taken to the people, and the result has been that if the case has not been expressly overruled, it has been superseded by other more accordant decisions. Eventually the people gave the law; and so must it ever be though the process in such case is necessarily a slow one and properly should be.

Courts, legislatures and constitutional conventions are carried along upon the wave of advancing humanity. When they attempt to stem the current, they are swept aside as so much drift wood; they are caught upon the banks and sand-bars

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of time, and have afterward but a fleeting existence in history.

The moral to be drawn from these reflections is, that it is of the highest importance that in the election of judges, persons should be selected who have not only a knowledge of law, sound judgment and vigorous intellect, but a keen, correct and cultivated moral sense, and a healthy conscience, and who are fully up to the intellectual and moral progress of the people and the spirit of the age.

Charles B. Waite.

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The Legal Aspect of the Boycott.

The demand of a recent writer in the North American Review that 'boycotting' should be punished without fear or favor has been met by the punishments recently inflicted upon those participating in that criminal method of coercion for sometime practiced in our midst. The expressions of judges in pronouncing sentence upon those found guilty of having been engaged in what is known as a 'boycott', have given us a legal definition of that not altogether euphonious term.

In the case of the State v. Glidden, Judge Pickett, from the bench of the City Court of New Haven, Connecticut, in delivering a very interesting opinion, took occasion to define the term 'boycott.'

"The term 'boycott,'" he says, "is comparatively new, better understood in this country by operation than by description, and, so far as is known to the court, is described and defined in permanent literature only in the Encyclopædia Dictionary, an English philological authority, the principal definition being as follows, to-wit; 'To put a person outside of the pale of society, high or low amid which he lives, and on which he depends; to socially outlaw him, to have no dealings of any kind with him.' In this country, it is within common knowledge, that the term is a compendious name used to describe a series of acts not in the line of lawful competition, commenced and continued by all persons who can be pursuaded to join in them, to hinder and prevent the proper pursuit of a lawful occupation or business, with intent to injure the cor-

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poration, firm or individual against whom the 'boycott' is directed."

The term "boycott," as plainly implies, in the opinion of Judge Pickett, that it is an act or series of acts to be carried on by a combination or confederacy of persons, as the term "mob" implies the doing of an act or series of acts by such combination or confederacy.

The necessary and systematic discipline illustrated in recent boycotts attempted in this country prove beyond controversy the existence of combinations and confederacies, more or less extensive, of persons engaged in organizing, planning, and carrying them out. Without organization, the object of the boycott could never be attained. But all combinations and confederacies formed for the purpose of injuring third persons are highly criminal, and the boycott having for its object an unlawful coercion of third persons and directed to their injury, and only practical by reason of vast combinations, the illegality and criminality of the boycott is beyond dispute

It must be admitted, however, that, so far as this country is concerned, this is an age of combinations. Combinations are constantly appearing in all parts of this country.

In every line of industry combinations are the prevailing quantity. Combinations are formed by dealers in iron, coal-dealers, lumber-dealers, millers of all kinds, dealers in new material and in manufactured articles, manufactures of hardware, of glass-ware and pottery, of paper, dealers in dry goods and various industries, to say nothing of pools of coal and oil companies, and the pools and combinations of railroad, telegraph and telephone companies, and the stupendous labor unions and organizations.

Money kings unite to make binding arrangements for the control of entire lines of trade, the only difference between the capitalist and the laborer in this respect being that the former prefers the term "binding arrangement" to the more plebeian one of "combinations." Wholesalers are prevented by combinations from selling at retail, being threatened if they violate this binding arrangement with loss of trade. Prices are controlled by combinations formed for that purpose, and

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production shares in the same fate. Competition is no longer a great factor in the world's economy. The seller is protected from competition, the buyer is protected from buying in competition by purchasing through the agent of the organization of which he is a member. Combinations, everywhere permeating society, have been fostered by a desire on the part of the members of society for protection against competition, either in capital or labor.

The following is a fair illustration of the extent of these combinations. The other day three well-dressed, well-fed gentlemen met in a New York Hotel and fixed the amount of anthracite coal to be produced in the United States during the month of October. The out-put agreed upon will be 3,256,000 tons, or 250,000 tons less than the corresponding month last year. By the action of the coal ring a heavy tax is levied upon every consumer of coal in this country and thousands of workingmen are thrown out of employment. The condition of affairs in this country which has made it possible for three men to arbitrarily limit the production of coal, makes the necessity for the coal-miners to form combination, for their own protection. The same is true in other lines of industry.

Wherein is the evil? Is it in the means or the end? It is proved by the policy of shrewd rulers that combinations of persons in the same trade should not be allowed, because of the dangers attendant on such combinations. It has been observed, that one of the objections raised in ancient times in Greece against the union of people in the same trade or occupation, was that the meetings degenerated into political conspiracies. The example cited in Kent's commentaries of Trajan's refusal for the same reason to accede to the request of Pliny, that he might enroll a fire company out of the workmen of Nicomedia, is suggestive. No precautions, said the shrewd Emperor can prevent such associations from becoming mischievous and dangerous conspiracies.

Students of political economy will remember that in 1776 Adam Smith in his Wealth of Nations wrote that "people of the same trade hardly meet together, even for merriment and diversion, but the combination ends in a conspiracy against the

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public, or in some contrivance to raise prices." And who can say that the combinations of the present day among people of the same trade have not had in them the elements of a conspiracy against the public or a contrivance to destroy competition?

Of course all these combinations, in modern times as well as in the days of Trajan, are supposed to be purely voluntary, but if any corporation or firm or individual shows any backwardness about joining their so called unions for mutual protection, they are whipped into line not by competition and kindred devices, but by conspiracies to injure, in these latter days termed boycotts, strikes and lockouts. Communism is never voluntary. It is this which destroys individuality. It is this combination which ends in a conspiracy against the public or individual third persons, which destroys competition, which fosters a misdirected protection, that makes boycotting not only unlawful but dangerous to a free state.

Organizations for the purpose of preventing lawful competition aim a blow at the existence of society. It is safe to say that competition has been a means in the way of exalting mankind to the high plane of the civilization of this century. No organization should be allowed to undermine this factor in civilization. Organization is a great thing in this world.

There is force in unity and combination and one of the greatest powers in a free country is proven to be in labor organizations. But society is a greater organization and more to be regarded in its dictates and commands than Central Labor Unions.

In civilized society any organization that aims at the destruction of any of the laws recognized for the good of all mankind, demonstrated as such by the experience of ages, for instance at competition or the laws which govern freedom of intercourse among mankind, cannot be tolerated. As far back as 1835, in New York a conspiracy against certain journeymen workmen to raise wages, by entering into combinations to compel journeymen and master workmen employed in the same trade or business to conform to rules established by such combinations for the purpose of regulating the price of labor, accompanied by overt acts to carry such rules into effect was

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held to be indictable. In the case of The People v. Fisher, 14 Wend. 9, Chief Justice Savage, in delivering the opinion of the court said,—"It is important to the best interests of society that the price of labor be left to regulate itself, or rather be limited by the demand for it. Combinations and confederacies to enhance or reduce the price of labor, or of any articles of trade or commerce are injurious They may be oppressive, by compelling the public to give more for an article of necessity or convenience than it is worth, or on the other hand compelling the labor of the mechanic for less than its value.

Without any officious and improper interference on the subject, the price of labor or the wages of mechanics will be regulated by the demand for the manufactured article, and the value of that which is paid for it, but the right does not exist to enhance the price of the article, or the wages of the mechanic, by any forced and artificial means. * * * * * All combinations therefore to effect such an object are injurious, not only to the individual particularly oppressed, put to the public at large."

In the recent anarchist cases at Milwaukee, Wis., Judge Sloane is reported as having said that "laborers or capitalists may organize for their own protection, but have no right to take the aggressive. In our social and industrial life and in our government, the socialist, and the anarchist and the boycott have no place."

And Judge Barrett of New York, in passing sentences, ranging from eighteen months to three years and eight months on those engaged in distributing circulars in what is now well-known as the Theiss Boycott. said " you have violated public right and opinion. Your offence is not short of blackmail. The distribution of circulars by you in places of business is conspiracy and punishable as such. Your conduct if unpunished would lead to savagery."

From these and other expression used by judges in passing upon cases coming before them, we are warranted in saying, that boycotting, according to the means used for its successful

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accomplishment of the end in view, is clearly within the offences named in the laws against blackmail and conspiracy.

In the State of Illinois there is a statute against two or more persons combining for the purpose of depriving the owner or possessor of property of its lawful use, and management, or of preventing by threats, suggestions of danger, or any unlawful means, any person from being employed by or obtaining employment from any such owner or possessor of property, on such terms as the parties concerned may agree upon.

The evil then of an organization using the power at its command, for the purpose of a boycott, lies, as indicated by the courts and laid down in the statute, in the combination and confederacy of individuals to prevent and hinder by the success of the illegal acts of blackmailing, conspiracy or intimidation, or by a series of such acts, the proper pursuit of a lawful occupation or business, having for its end and purpose the injury, perhaps the destruction of those who do not obey the dictates and commands of the organization directing the boycott. The source of the evil is in the means employed; the end of the evil is in the proposed and intentional wrong and injury sought to be accomplished.

The remedy for the evil consists in the enforcement of the laws already existing against blackmailing, conspiracy, intimidation and kindred offences. The fearless and tireless prosecution of those engaged in boycotting, for the means by them employed, is the remedy open to us at present. A prosecution without fear or favor of those indulging in reckless law breaking will inculcate in their minds more respect for the principle underlying the safety of all government, namely, that law must be obeyed. Moreover the enforcement of the law, and its necessary consequence that of obedience to the law destroy the wrongful and illegal means by which a boycott is accomplished and is possible.

There is a growing demand in this country for the speedy enforcement of law, rather than for the enactment of new law. Public opinion demands that laws enacted,—that existing laws, should be obeyed. If laws are wrong they may be repealed,

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but not trodden underfoot. Every man must obey the law, he should have no power to escape the law. This enforcement of the law, cultivating in the minds of men a respect for the law and taking from them the self-appropriated means of blackmailing, conspiracy and intimidation, is the great remedy for the present evil, practiced so relentlessly in the boycott, an evil not in itself a crime, but highly criminal in the means employed to accomplish the end.

The enforcement of existing laws will do far more towards the settlement of the difficulty, than the enactment of new laws. The difficulty is to suggest new remedies. It is difficult to regulate the differences constantly arising between capital and labor. It puzzles statesmen and philosophers. No one at the present time has been able to solve the problem. It seems, however, that it is evident, that something must be done by the government towards providing greater power and facilities for the enforcement of laws already existing. Whenever there is sufficient power and authority to enforce laws, laws will be obeyed. This with the passage of laws preventing monopolies in the field of capital or labor and the repeal of all laws looking to the protection of certain industries, allowing competition and the law of supply and demand to regulate the market for industries of all kinds, we predict will go far to solve the present problem, and banish from our midst the evil practices of the boycott.

Lynn Helm.

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HISTORY OUR TEACHER.*

We believe that this age is far in advance of any of its predecessors. If we have surpassed others, it is because we have profited by the experience of past generations; it is because that to us is opened a rich store-house of wisdom containing the history and experience of men for many centuries. From this source are derived the laws of nations, systems of philosophy, and materials of science And the lessons taught by history are not illusive; they are not doubtful. "History is philosophy teaching by example," Macaulay has finely said. Its science may be profound but its practical truths are plain and simple. It took a Newton to expound the laws of gravitation, but all men saw its results and took cognizance of its action, before his time; so it may take a Hegel to write the philosophy of history, but all who read may know its facts, profit by its warnings, and be instructed in its teachings.

To history we are accustomed to look for those ideals of life, which mold our characters and determine our conduct. Speculation and subtile reasoning may satisfy the learned, but the masses seek concrete forms; the multitude demand images. Every school boy knows of the genius and versatility of the great Athenians, has heard of the ambition of Philip and the conquests of Alexander. All men still look with wonder and admiration at the man Cæsar, whose name in many languages has

*The prize oration, delivered by Arthur B. Camp, at the graduating exercises of the Union College of Law, June 16, 1886.

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come to be only less than that of the Deity, while the story of the Empire which he founded is as a beacon light to guide the nations. The Western World has been won to free institutions by the glorious examples of Washington and Bolivar; the stern Mohammed has molded the character of the millions of the Moslem faith, while all christendom has been softened and humanized by the story of the meek and lowly Nazarene.

Many considerations render the history of the English court particularly instructive, and lend to it a peculiar charm. In most countries the courts have sprung from the necessities of the government; in England the government has been developed from the meeting of the wise men among the Anglo Saxons. This *judicial* assembly was the germ of parliament, the foundation on which has been erected that magnificent structure of the English constitution. Then too, the wise policy of the law is to make the course of justice straight and its rules uniform by a constant appeal to precedent. An ancient foundation is sought for every pillar that is wrought into this frame work. We have that strange phenomenon of a system of rules, closely conforming to the *stare decisis*, rigidly adhering to established precedent, yet still keeping pace with a progressive race and adapting itself to the changing circumstances of successive ages. In the history of such a conservative system, shall we not find a record from which are eliminated many confusing digressions, many of those strange freaks which pass over the public mind with the fury and rapidity of a cyclone and are only to be accounted for by the curious student of enigma; shall we not find abundant data for the reason, free from those factors which serve only to complicate the problems of history?

This legal chronicle has no narrow boundary. It embraces the various definitions and regulations of domestic and social relations, the recognition of every right, the redress of every wrong, and the punishment of every crime known among men; it includes the laws of commerce their growth and developement with all the manifold rules which govern the transfer and transmission of property, which point out the rights and duties of the individual, and limit the power of the state.

On this field also, have been fought our great battles for in-

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dividual and religious liberty, for freedom of speech and of the press. Here we have seen innumerable victims consigned to the dungeon, the scaffold, the gibbet and the torch by the bigotry of religious sects and from their martyrdom we have learned, strictly to divorce church and state. Here we may see the progress of that struggle which gradually liberated the subject from the despotism of the crown, from the clutches of the messenger of the star chamber, the oppression of general warrants, commitments for contempt of the Chancery Court and the horrors of a debtor's prison. Here we may see John Hampton vindicating the rights of Englishmen by resisting the extortion of ship-money. Here we may see Lord Camden at the Bar of the House of Lords, and Thomas Erskine at *Nisi prius* and Westminster pleading for the liberty of the press.

The court is the great labratory of the legislator in which all his work is tested and the results registered with unerring accuracy. It never fails to show the folly of a bad law, and is rich with suggestion to the careful student. The history of decided cases is to the lawyer and legislator, what past discoveries and experiments are to the scientist of to-day. But to the masses of mankind the annals of justice have a far greater interest and significance. On its fair and impartial administration depend all our liberties, all our security, all our property. This must be guarded with the most zealous care, and fortified with all the wisdom and learning which intelligence can wrest from reason, or painstaking investigation can gather from antiquity.

Arbitrary power has ever tried to control the judiciary for its own evil designs. But English speaking people have always appealed to its history and pleaded the immemorial enjoyment of their privileges and immunities. The stubborn adherence to these traditionary rights and liberties in the popular mind, checked the rapacity of the Norman conquerors, and, being put into definite form and reduced to writing by various charters and bills of rights, became the antidote to tyranny, restraining oppressive legislation by parliament, and overthrowing the despotism of the Stuarts. It was to these ancient rights of Englishmen that our fathers of the revolution laid claim; and

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from the history of the courts of common law we have derived the salutary principles of our constitutions.

In this country the judicial power like all other, proceeds mediately or immediately from the franchises of the people. Public opinion has come to both make and administer the law. As easily can one man or set of men abide the ebb and flow of the mighty ocean, as to withstand the full tide of an enlightened public sentiment. Such being the case, we are compelled not only to train a body of skilled men for the practical work of the court, but also to move the popular understanding and sympathy to their support. We must educate the voter; must let all the light of history fall on the path of our electors and ever formulate and keep alive a wise and righteous public sentiment on all questions, of insurance, of foreign policy or domestic economy.

In the last few decades the rapid growth of trade, commerce and manufactures, owing to the extensive use of steam and electricity, has greatly involved some of our old difficulties, and brought into the body politic some new problems for legislation and adjudication. These daily increase and call for increased learning to understand, and skill to apply the eternal principles of justice and equity. But for our most reliable information and our best guides we must still turn to the pages of history and the great law-makers of antiquity. Whatever the issue, whether it be the conflicting claims of labor and capital, intemperance, monopoly, sociology, official corruption, or municipal misrule, still we must see to it that our highest interests are always intrusted to men for whom the records of history have not been written in vain.

Arthur B. Camp.

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MAGNA CHARTA.

There is no event in the history or growth of the English constitution of more importance to the world than the signing of the great charter, known in law as *Magna Charta*, by King John. It was a strife of Kingly and Baronial power. The king was one, and the barons were many.

The king, to restore his territory lost on the continent and to regain his prestige, proposed another war, and sought to lead a feudal army into Normandy. The barons utterly refused to obey his behests, insisting that they were not bound to render military service abroad.

Out of the great councils held for the discussion of baronial rights grew the first clear idea of representative government. At a grand council held at St. Albans, there were present, not alone the ordinary collection of bishops and barons, but the head men and four delegates from each township of the king's domains, as though it had been a county court.

Here was a definite order of representation by men charged to express the opinions of their constituents. They brought out the laws of King Edward, the Confessor, and the engagements or charter of Henry I, and drew up a document founded on them, prepared to exact the King's pledge to be ruled by these important precedents.

When John found himself at liberty to look after things at home his first purpose was to make war upon the barons and compel them to submission. But they were too powerful,and he was compelled to yield to their demands. In a beautiful meadow, overlooked by the towers of Windsor Castle, the barons surrounded King John and compelled him to affix the great seal to the charter of English Rights, which they called *Magna Charta*, and which has from that day to this been preserved by all English speaking peoples.

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THE MORMONS

AND

THE TREATY WITH MEXICO.

In justification of the practice of polygamy, two things are presumptuously claimed by the Mormons and some of their apologists and defenders, under the treaty of Guadaloupe Hidalgo, as follows:

First. They say this treaty with Mexico, made and ratified on the 30th day of May, A. D. 1848, secured to the Mormons, under the Mexican colonization law, Mexican citizenship; and second, that when the Mormons entered the Territory of Utah, polygamy existed as a part of their religion, and, therefore, its practice was secured to them under said treaty, because it was a part of their religious faith.

It will be remembered, that the Mormons have resided as a people in the United States of America for many years. Under the leadership of Brigham Young they entered Great Salt Lake Valley, near the present locality of Salt Lake City, on the 24th day of July, A. D. 1847. They entered as a colony from the United States, with the flag of the United States, which they unfurled on Ensign Peak, as a token of their citizenship, and of their allegiance, and claimed the protection of the Government of the United States against Mexico and all the world.

It will also be remembered that, at and before that time, the United States and Mexico were at war with each other, and that Brigham Young and his Mormon confederates, on their own request had been permitted to furnish an entire battalion of Mormon soldiers to the United States Army for the Mexican War, and that this battalion was, at and before this time, in the field of operations against Mexico, and so remained until the close of the war. This fact has been paraded by Brigham Young and the Mormon Priests before the public, on all occasions, from that time to this. And it is a well authenticated fact, that the first installment due from the United States to this

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Mormon battalion, amounting to about twenty thousand dollars, went into the hands of Brigham Young, with which he was enabled with his people to emigrate to what is now termed the Territory of Utah.

The United States carried out its contract, accepted the battalion, paid the money to Brigham to emigrate the Mormons, as a part of the occupying force on Mexican soil.

It is true, that this Territory was then claimed by Mexico to be a part of the domain of the Mexican Republic. But it is also true that the same, at and before that time, was in the undisturbed possession of the United States, and that the United States claimed that the boundary line between the two republics was south of what is now called the Territory of New Mexico; for here was the initial point for the military action of our army against Mexico.

From this short review of facts, it is seen that said claim is utterly baseless.

Had the Mormons entered Utah Territory with the intention of becoming Mexican citizens under the Mexican colonization law, and had they unfurled the Mexican flag instead of the United States flag, with the declaration that they absolved themselves from all allegiance to the United States, and thereby joined their fortunes to the Mexican Republic, there would be some plausibility to the said brazen assumption. But such, as has been shown, was not the fact. It is a well-understood principle, that neither a person nor a colony of persons can become citizens of a foreign government by the mere act of entering and settling upon its domain.

However accommodating the Mexican colonization law may have been, it did not in such a summary and loose manner transform United States or other foreign citizens into Mexican citizens, and especially against their will and declared intention, and warlike actions. Such a transition or transplanting requires the exercise of a purpose to that effect, and also some legal public act of recognition, under the forms of law, on the part of the government adopting them as citizens. No fact has been made more public by Brigham Young and his Mormon followers, than that they entered Utah as loyal citizens of the

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United States under the Stars and Stripes. This also has been their boast on all public occasions. But let us look at the Mexican colonization law, and see if this claim has a foundation in fact.

By the decree of the Government of the Mexican Republic, issued on the 18th of August, 1824, it was ordained as follows:

1. "The Mexican nation offers to foreigners, who wish to establish themselves in her territory, security for their persons and property, in so far as they conform to the laws of the country." (Civil Law of Spain and Mexico, Appendix V. sec. 2.)

By the rules of naturalization, it is ordained:

1. "Every foreigner who has resided within the limits of the United States of Mexico for the space of two continuous years may demand letters of naturalization, according to the rules laid down in this law.

2. "To obtain them, he must present himself to the district or circuit judge nearest his place of residence, after citation and appearance of the promoter fiscal of the Circuit Court or the Syndic of the *Ayuntimiento* in the district court, after proving, first, that he belongs to the Roman Apostolic Catholic Church, by witnesses or a certificate of the baptism in due form; secondly, that he has some trade, profession, or income sufficient for his maintenance, to be proved by witnesses, who must explain the nature of such trade, profession or income.

3. "Whoever wishes to be naturalized must also present, one year beforehand, a petition, in writing, to the *Ayuntimiento* of the place where he resides, explaining his intention of establishing himself in the country. Proof of such declaration must accompany the documents spoken of in the preceding article.

4. "With these documents he must present himself to the Governor of the State or principal political chief of the district or Territories of the federation, requesting letters of naturalization.

5. "The petition must contain an express renunciation of all allegiance and obedience to every foreign nation or government, and especially of that to which he belonged. 2. He

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must also renounce every title, order of knighthood or favor received from such government. 3. He must swear that he will support the Constitution, the constitutive act, and the general laws of the United States of Mexico."

* * * * * *

13. "Every *empresario* who comes for the purpose of colonization, and who effects it in conformity to the general law or the special law of some State, acquires the right to ask for letters of naturalization; which shall be granted upon his swearing due obedience to the Constitution and laws."

14. "Colonists who come for the purpose of colonizing lands susceptible of colonization shall be considered naturalized after the lapse of a year from their settlement.

* * * * * *

17. "Letters of naturalization will not be granted to citizens or subjects of a nation with which the United States of Mexico are at war." (See Rules of Naturalization, Schmidt's Civil Law of Spain and Mexico, Appendix VII.)

Here is the proof that neither by the said treaty of peace, hereinafter quoted, or the law and rules of naturalization, above quoted, were the Mormons invested with Mexican citizenship, as it has been impudently asserted; for there are two sufficient and insurmountable reasons that prevent their becoming Mexican citizens under the Mexican law: first, they did not settle in Utah with the intent of becoming Mexican citizens, or of residing under and of submitting to Mexican institutions and laws; second, as a people and as citizens, they were from the United States of America, with which Government the Mexican Government was at war. Nor is it true that "polygamy (at the time the Mormons entered the Territory) existed as a part of their professed religion;" nor was "its existence permitted under Mexican authority."

It is well-known that, at that time, as now, the Mexican Republic, judicially considered, or in its civil polity, was under the civil law. By this law, polygamy or bigamy was denounced as a crime, as follows: "*Bigamists* are punishable with two hundred stripes *and ten years condemnation to the gallies.*" (L. 8, Tit. 20, Lib. 8, Rec. See also Johnson's Civil Law of Spain,

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Book 2, Title 20, page 269.) By the Statutes of Mexico it was a felony, and punishable as under the civil law of Spain, above quoted.

In this connection it must be remembered that the religion of Mexico was, in the language of its statute, that of the "Roman Apostolic Catholic Church;" that its population, or at least its citizens, were morally, if not politically, wholly controlled by the principles and creed of that Church. By the law of this Church, as well as by the civil law of Mexico, polygamy, or bigamy, was denounced as a high crime, punishable by excommunication from the Church and imprisonment, under the civil law, in the gallies, for ten years. Mexico, by her law of marriage, conformed strictly to the law of the Catholic Church, as follows:

"Marriage is formed between a single man and a single woman; no man can have at the same time more than one wife, and no woman more than one husband." (See Schmidt's Civil Law of Spain and Mexico, Chap. 2, Sec. 1, Art. 18, page 6.)

"Every marriage must be publicly proclaimed by the curate of the parish, during three consecutive holy days, at high mass." Ib. Art. 24, page 7.)

It is manifest, therefore, that the Mormons cannot claim license or protection in their practice of polygamy or bigamy under either the civil law of Spain, the Statutes of Mexico, or the ecclesiastical law of the Roman Apostolic Catholic Church. And it is not true, as has been asserted, that "When the Mormons entered the Territory of Utah, polygamy existed as a part of their religion." It was at that time practiced by some of them, but in violation of their ecclesiastical laws contained in their "Book of Doctrine and Covenants," which is, or was, what they claimed to be the special revelations of God to Joseph Smith, and was, at that time, adopted by the Mormon church as their rules of faith and practice. By this book, polygamy was by name vehemently denounced as a high crime against God and man, and prohibited by fearful penalties in this and the future world. (See Book of Mormon, page 118 and Book of Doctrine Covenants, page 331.)

It was not until 1853, about six years after they entered Utah, and more than five years after the treaty of Guadaloupe Hidalgo

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was made and ratified, and nearly ten years after the death of Joe Smith, that the pretended revelation to Joseph Smith, through and by the proclamation of Brigham Young in Utah, commanding the establishment of polygamy in the Mormon church as a religious duty or dogma, was made known and enjoined upon that people. Before this time, it was, by the laws of the church and the precepts and teachings of her elders and bishops and apostles, an unpardonable sin against God—a crime against the church, and punishable by excommunication from the church.

A more glaring error was never asserted when it is said, that, "under the treaty (with Mexico) of 1848, they (the Mormons) were to be admitted into the Union with all convenient speed, on a footing of equality with the other States, *and until so admitted, the treaty, section ninth, guaranteed them protection in all their rights, privileges, customs and religion,*" *and that "polygamy was then a part of their religious creed;*" and therefore, thereby, concluding that "*polygamy was secured to them by said Mexican treaty of peace.*"

As to polygamy being, at the time the Mormons entered Utah, "*a part of their religious creed,*" we have already shown that, by their *book of Mormon and book of "doctrine and convenants,*" which contain all the pretended revelations of Joseph Smith, then published as rules of faith and practice, polygamy was denounced as a crime, punishable by excommunication from the church, and held to be an unpardonable sin against God and man; and it is unnecessary to say more upon this point. But by reference to section nine of the treaty of Guadaloupe Hidalgo, the whole statement is seen to be utterly without foundation. Neither the ninth or other sections of this treaty have any reference to Brigham Young or the Mormons, or the Mormon religion, or their settlement in the great Valley of Salt Lake. We will refer to this treaty and prove by its text, that it had not.

Article eight provides, that *Mexicans* included in the ceded territory to the United States of America, are free to remain or to remove to Mexico with their property, or of disposing of the same at their pleasure; that they may retain the title and rights of Mexican citizens, or become citizens of the United States;

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and that their election shall be made within one year.

Article nine is as follows: "*Mexicans* who, in the Territories aforesaid, shall not preserve the character of citizens of the Mexican Republic conformably with what is stipulated in the preceding article, shall be incorporated into the Union of the United States, and be admitted at the proper time (to be adjudged by the Congress of the United States) to the enjoyment of all rights of citizens of the United States, according to the principles of the Constitution, and in the mean time shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without restriction."

By this article it appears that it was *Mexicans, and their "free enjoyment of their liberty, property and religion"* that was secured by the treaty, and not Mormons and their liberty, property and religion. These were already secured to the Mormons, so far as they conformed to or obeyed the Constitution and Laws of the United States, by the Government of the United States; and they were then being defended in the exercise of these by the Army of the United States. The protection which the treaty gave to Mexicans and their religion is confined to Mexican citizens and Mexican religion; which religion was that of the Roman Catholic Apostolic Church, and which was then incorporated into the civil policy of that republic; and it has no reference to any other people or religion.

The Mormons, as a people and as a religious sect, were not even alluded to in the treaty, and were probably unknown to the Mexican Republic; and beside, the Mormons as a community, as we have said, were at that time, as they claimed to be, citizens of the United States of America. This is manifest from their conduct when they arrived in the Territory, for they not only proclaimed themselves such, but, as we have said, they unfurled the flag of the United States, and at once practically adopted in their courts the common law of the United States, which is based upon and forms a part of that of England.

Had they intended to settle in Mexican Territory, under the Mexican colonization law above quoted, with a view to become Mexican citizens, they would have so declared at the time, and

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would have raised the Mexican flag and adopted the civil law of Spain and Mexico, if not the religion of the Catholic Church, instead of adhering to the stars and stripes, and adopting the common law of the United States in their courts. But they gain nothing for their system of polygamy by either the common law or the civil law of Spain and Mexico; for by both, polygamy or bigamy then stood, as it now stands, denounced as a monstrous crime, punishable with heavy penalties as a felony.

The Mexican, or Catholic religion, in like manner, denounced it as a crime against God, man and the Church. A grosser misconstruction and perversion of the treaty could not be made than that so impudently asserted. It has not a single element of truth in it. Its only apparent purpose seems to have been to deceive the public, and thereby create sympathy in favor of the polygamous practices of the Mormons, under the broad shield of national protection, by the sacred law of treaty obligations; and thereby effect something in favor of their said polygamous practices with Members of Congress, and thereby secure the immediate admission of Utah Territory into the Union as a State; and, if possible, defeat needed legislation on the part of Congress in behalf or in aid of wise administration of the local affairs in that Territory; and thereby bring the civil policy of that Territory into harmonious relations with the institutions of the Mormon Church, its theocratic despotism, its "Order of Enoch," (which requires all members to convey their real property to a Trustee in Trust for the benefit of the Church), its polygamous practices, and its blood atonement under the protection of the Government of the United States of America.

All these enormities would be included in the independent state-hood of that territory, giving place and power to an ecclesiastical oligarchy more tyrannical and bloody than any known autocracy of the world. With such, neither the constitution, the government, the laws, institutions, nor morals of the people of the United States can harmonise. Much needed legislation on the part of Congress for this Territory was deferred until 1882, when, what is known as the "Edmund's Bill" went into force. Remedial statutory law against felonies long delayed lowers the moral standard of the people, and renders

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the execution of the law more difficult. Such results have been and are still painfully prominent in Utah.

Since 1847, and until 1883, thirty-six years, the Mormon priesthood have been permitted to deceive their own people into the belief of the christian rightfulness of the practice of polygamy, and to disrespect, and even hate the institutions, laws, and the Government of the United States. During these thirty-six years it was impossible to execute the law upon the most flagrant violators of the same, except when the priesthood permitted the Court to impanel a jury in their own interest to do so, as in the case of John D. Lee, one of the one hundred and fifty, or more, engaged in the Mountain Meadows Massacre.

Not only was polygamy, robbery, and murder permitted to go unrebuked, and the perpetrators to go unpunished, but the priesthood were permitted to hold their people in ignorance by refusing them the benefits of free schools: for they well understood, that their system of polygamy under their theocratic despotism could not endure the light of truth and knowledge if they were permitted to flow freely in upon the rising generation.

It is time the Mormon system of crime, and its system of keeping the people in perpetual ignorance and slavery were effectually uprooted. Congress and the people of the United States have now the power to do it, and should not hesitate to exercise it. If they neglect to use it, and the Territory is admitted into the Union as a State with the Constitution now existing, this power becomes merged in the new state. As to population, Utah is now eligible to state-hood; and to render it practicable to admit it without investing the state with sovereignty over the question of polygamy, as over other domestic matters, there should be an amendment of the Organic Act of the United States inhibiting polygamy and bigamy in the States and Territories of the United States, and investing Congress with legislative power to enforce the same.

The Mormon priesthood are quite willing to come into the Union as a State with a state constitution prohibiting polygamy and bigamy, well knowing, that, when the territory became a state, the prohibitory clause could be stricken out, and

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the newly amended Constitution in all respects be made such as to favor the Mormon oligarchical policy; and this the priesthood having the power would be sure to do.

It must be kept in mind that under our present Constitution the legislative power of Congress over polygamy in the territories continues only during the time of territorial minority. Hence, if Congress and the people intend to exterminate polygamy, they must incorporate the prohibitory clause in the Constitution of the United States, otherwise, neither Congress nor the Federal Judiciary could interfere with the practice in the states.

Some time ago I suggested to the Hon. Shelby M. Cullom, Senator from Illinois, the importance of such an amendment of our national Organic law, and expressed my desire for the immediate introduction of preliminary steps to that end, and I am gratified to learn that such steps have been taken; and that Mr. Tucker of Virginia, in the other branch of Congress has reported from his committee a like amendment. It was hoped that such a measure would be submitted by Congress at its last session, to the several state legislatures for final action on the meeting of the next several annual state legislative sessions but it failed to do so. The people of the states universally will welcome the measure when they have the opportunity.

An other much needed amendment is, the regulation of marriage and divorce. A great people and government, like ours, require a uniform system for both branches of these domestic and civil relations. It would aid in the settlement of many Mormon problems inimical to our civil polity in a manner not as yet understood by our citizens.

C. M. Hawley.

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Advice to Young Lawyers.

An address delivered to the graduating Law Class of the Wesleyan University by Robert Hervey, LL., D.

I have been requested to say a few words to you on this occasion, and it affords me great pleasure to do so. You are now about entering upon the practice of one of the noblest of the professions. Cling to the right, be honest, just and true, keep ever in mind the sacred character of the trust reposed in you by those by whom you may be professionally employed. Study your cases with care, inform yourselves accurately as to the legal principles involved in the ligitation, and you will have thus acquired one of the great elements of success. Be faithful, vigilant, indefatigable.

If there is one profession more than another, wherein absolute fidelity is an imperious necessity, it is the profession of the law.

Constantly strive my young friends to increase your stores of legal knowledge. Never for a moment entertain the erroneous notion "*that you know it all.*" No lawyer can ever attain that degree of prominence and success in his profession, which it is my earnest wish that you may all in the future be fortunate enough to reach, if he considers himself at any period of his professional career *fenced* in and *finished.* Strive to learn something daily, and let me assure you from my own experience of nearly forty years of active practice, that there is something for a lawyer to learn every day.

The business of this great country is rapidly increasing not only in volume, but in many instances in the new and important application of legal principles practically unused half a century ago. You may, and I hope will live to see the United

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States of America contain one hundred millions of population, with every branch of industry science and art developing to a degree now hardly thought of. All this you will have to encounter. Keep up with the times in which you live. Familiarize yourselves with the adjudications of the courts as applied to the current and important business of the day.

Study closely the Constitution of the United States, and those of the various states and the legislative acts passed in pursuance of and in subordination to their constitutional provisions. Be untiring in your researches, for research is the parent of knowledge and "knowledge is power."

"Our political fabrics and systems of jurisprudence" (as an eminent legal essayist has well observed) "which have been reared with great pains and perfected with much wisdom are to be guarded and protected not only from the open assaults of violence, but from the insidious operations of factions which are even more hostile and dangerous to the great principles of liberty.

This will be your high calling and duty. A wide field is opened for the virtuous and generous youth of our universities. The many and important posts in our Government ought to be and necessarily will be filled by a succession of able young men, who will take the places of the men of the present generation when they are gone; young men, who to the indispensable virtues of probity and patriotism, unite an acquaintance with the leading principles of the law, and a thorough knowledge of our Constitutions, a most important part of the education of an American lawyer. The interpretation or construction of a constitution is as much a judicial act, and requires the exercise of the same legal discretion, as the interpretation or construction of a statute.

And here let me urge you my young friends to keep ever in mind that "the law aside from its value as the measure an conservator of our rights, is one of the noblest of the applie sciences. It is beneficial in its purpose. It aims to secu equity between men in their dealings with each other. It lies at the foundation of our system of government. It is both a source and principle of authority, in our halls of Legislation and in our Tribunals of Justice. It underlies our institutions

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and conserves them. It out-reaches the individual reason, and covers with its protecting power every social interest and every relation in life. It is the conscience of the state every where present—in the manifold activities of her citizens."

Public speaking is an art especially applicable to the profession of the law. The main object of public speaking is to illustrate and enforce the truth.

Study then my young friends as public speakers to engage the attention of your hearers. State your cases with clearness, arrange your arguments with skill, and deliver them with justness of expression and above all with the force of sincerity. Without this last and most essential requirement a man is but an automatic speaking machine and his sentences no matter how well ordered and rounded will fall powerless on the minds of his audience. I trust that you my young friends are one and all stimulated by the noble and generous desire of becoming in due time distinguished as lawyers, magistrates and statesmen. Yours are now "the ardent years when the wishes know no boundary and the ambition no curb." Keep your eyes ever on the highest places and exercise a manly and undaunted determination honorably to reach, and above all to deserve them.

That such may be your bright future is my earnest hope, and, of this be well assured that in all your laudable efforts to reach distinction commensurate with your loftiest aspirations, you will find no more sincere and faithful well-wisher, or one to whom your most brilliant success in life will afford more pure and unalloyed pleasure than the humble individual who now addresses you.

Robert Hervey.

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AMENDMENTS TO THE FEDERAL CONSTITUTION.

The Constitutional Convention, its History, Powers and Modes of Proceeding. By John Alexander Jameson, LL. D., Chicago, Illinois. Third edition. Chicago: Callaghan & Co., 1873.[1]

A QUESTION of much interest has several times arisen, whether, when a State Legislature has once passed upon an amendment to the Federal Constitution proposed by Congress, its action can afterwards be reconsidered by it, or by its successor, and reversed. It may be useful to consider this question in the two cases, 1, where the action of the Legislature was negative, rejecting, and 2, where it was affirmative, ratifying, an amendment.

1. The question in its negative form first arose, in 1865, in New Jersey, in relation to the XIII amendment.[2]

1. The earlier editions of the work named above contained (§563) a brief discussion, in one of its aspects only, of the general question presented in the following article. It was the intention of the author, when the third edition should be issued, to consider the question fully, in all its phases, and with that view this article was prepared as a substitute for the section named, but circumstances compelled him to publish that edition merely as a revised one, without considerable addition or modification. The article will appear, in its present shape, in the fourth edition of the work soon to be issued.

2. A similar question, it is true, arose in North Carolina, at the time of the adoption of the Federal Constitution. The State Convention at first rejected the Constitution, but afterwards ratified it. So far as we are aware, no objection was ever raised that the State had exhausted its power by its first vote. But, because it was the Constitution itself upon which the Convention was voting, we have not considered the case applicable to the question of adopting amendments under the Constitution.

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The amendment was rejected by the Legislature of that State, December 1, 1865, and notice thereof was duly given to the Secretary of State at Washington. That officer published his certificate, December 18, 1865, declaring, that the amendment had been adopted by the votes of twenty-seven States, and had become a part of the Constitution.[1] In this certificate no mention was made of New Jersey. January 23, 1866, the Legislature of New Jersey reversed its previous action, and approved the amendment. The same question arose again in North Carolina, South Carolina and Georgia, in relation to the XIV amendment, submitted by Congress to the States on the 16th of June, 1866. The Legislatures of those States, together with those of five others, Texas, Virginia, Kentucky, Delaware, and Maryland, rejected the amendment. Afterwards, the governments of ten of the rebel States, including the three first named, were, by the Act of Congress of March 2, 1867, and the acts supplementary thereto[2] declared to be illegal, and new governments were erected therein under the direction of Congress. By the new Legislatures of North Carolina and South Carolina, the former on the 4th, and the latter on the 9th of July, 1868, resolutions were passed ratifying the XIV amendment. These resolutions were certified to the Secretary of State, and the votes of those states were, in pursuance of a resolution of Congress, counted by that officer as valid votes, and the amendment was on the 20th of July, 1868, in a certificate of that date, proclaimed by him to have been duly ratified. The new Legislature of Georgia, in like manner, on the 21st of July, 1868, receded from its vote rejecting the amendment and passed a resolution ratifying it, and that State was included by the Secretary of State amongst the ratifying States in a second certificate, issued July 28, 1868.[3]

Were the Legislatures, in receding thus, and ratifying after having once rejected the amendment, acting within the scope of their powers? The subsequent recognition of the votes by Congress, and by the Secretary of State, as valid, must, we think, settle this question in the affirmative. The Constitution

1. U. S. Stat. at Large, vol. xiii, p. 774.
2. U. S. Stat. at Large, vol. xiv, p. 428; vol. xv, p. 2
3. U. S. Stat. at Large, vol. xv, pp. 706, 708.

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is silent as to the conditions necessary to constitute a valid vote in such a case, and as to the proper authority to pass upon the question when it arises.

The only law relating to the subject is the Act of April 20th, 1818, which provides:

'SECTION 2. That whenever official notice shall have been received at the Department of State, that any amendment, which heretofore has been or hereafter may be, proposed to the Constitution of the United States, has been adopted, according to the provisions of the Constitution, it shall be the duty of the said Secretary of State forthwith to cause the said amendment to be published in the newspapers authorized to promulgate the laws, with his certificate, specifying the States by which the same may have been adopted, and that the same has become valid, to all intents and purposes, as a part of the Constitution of the United States.'[1]

Two questions arise upon this act: 1. Is it constitutional? 2. What is its true construction? Does it devolve the duty of deciding upon the validity of votes cast, upon the Secretary of State, or upon some other and what officer or body?

That the act is constitutional, it is conceived, admits of little doubt. Article I, Sec. 8, clause 17 of the Constitution gives to Congress power "to make all laws which shall be necessary and proper for carrying into effect the powers vested" thereby "in the Government of the United States, or in any department or officer thereof." The power to amend the Constitution is a power vested by that instrument conjointly in the State legislatures, or conventions, and in Congress. It is obvious that some department or officer, either of the General or State Governments, must inspect the votes cast by the States, and pass upon their regularity and validity. Of the two, the more proper government to discharge this function, is that of the Union; indeed, it would be inconvenient, if not impracticable for the States to attempt to do so. The necessity of the case, therefore, under the Constitution, authorizes the intervention of Congress to prescribe by law the officer or de-

1. U. S. Stat. at Large, vol. iii., p. 439.

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partment, who should decide the question. Besides, whether a given amendment has become the law of the land or not, if, in some respects, a judicial question,[1] is also a high political question, of which Congress, in whose hands the political power is principally vested, ought to assume and retain the control.

But what is the true construction of the Act of 1818? It provides, that "whenever *official notice* shall have been received at the Department of State, that any amendment has been adopted, according to the provisions of the Constitution," it shall be the duty of the Secretary of State to cause it to be published, &c. "Official notice" received from whom, and how? It may mean, received from the several States, in the shape of certificates, that their respective Legislatures have ratified the amendment, in number and character sufficient, in the judgment of the Secretary, to make it the law of the land; or it may mean, received from some authority constitutionally declared to be competent to pass upon the votes taken, and to certify to him its decision. Such a discretion has not been given to the Secretary of State, and no such authority, it is believed, exists, unless it be vested in Congress; and, on the principles stated above, it would be difficult to deny to that body the power to act in the matter, if it should choose to do so. But, in the absence of any direction by Congress, it would, doubtless, be the duty of the Secretary of State, in the first instance, to inspect and pronounce upon the votes cast, provisionally, as a necessary preliminary to the issuance of the certificate required by the act, submitting all doubtfnl cases to the judgment of Congress. This course has been generally pursued since the foundation of the Government. That this is the true

1. In cases at law or in equity between individuals, doubtless, Courts may pass upon the validity of a supposed amendment. See Collier v. Frierson, 24 Ala., 100; Miles v. Bradford, 22 Md. R., 170. The spectacle, however, of a Court receiving evidence and presuming to determine, by its judgment, for the Executive or Legislative Department of the same Government, whether the Constitution is valid or not would be a most remarkable one; and, when the political power has spoken upon the question, the Judicial Department ought, perhaps, in conformity to the general practice of Courts, in such cases, to follow its decision.

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view, may, perhaps, be inferred from the action of the Secretary of State, Mr. Seward, and of Congress, in the reverse case relating to the XIV Amendment. When the votes upon that amendment were canvassed, the Secretary doubted, whether those from New Jersey and Ohio, which were necessary to make up the required number, ought to be counted. Those States, as we shall see, had first adopted, and afterwards rejected, that amendment. Accordingly he issued a certificate, on the 20th of July, 1868, in which he recited the facts, and declared the amendment adopted, provided the votes of those States to adopt were to be considered as still valid.[1] On the day following, a concurrent resolution was passed by Congress pronouncing the ratification of the amendment valid and sufficient;[2] whereupon, on the 28th of July, 1868, the Secretary issued a second certificate, reciting the resolution of Congress, and promulgating the amendment as a part of the Constitution.[3]

But, whether this decision is authority upon the question now considered, or not, the right of a State Legislature, after a negative vote has once been passed, to recede from it and ratify an amendment, is, we think, upon principle, unquestionable. The language of the constitution is, that amendments proposed by Congress, in the mode prescribed, "shall be valid to all intents and purposes, as part of this constitution, *when ratified by the Legislatures of three-fourths of the several States*," &c. By this language, is conferred upon the States, by the national Constitution, a special power; it is not a power belonging to them originally by virtue of rights reserved or otherwise.[4] When exercised, as contemplated by the constitution, by ratifying, it ceases to be a power, and any attempt to exercise it again must be a nullity. But, until so exercised, the power undoubtedly, for a reasonable time, at least, remains. Where an amendment has been submitted by Congress, four things may follow: 1, the States may not act upon it at all; 2, they may reject it; 3, they may accept it with conditions; and 4, they may ratify it unconditionally. In the first case, they must, in effect, be

1. U. S. Stat. at Large, vol. xv, p. 706.
2. Id. 708.
3. Id.
4. Art. V, Const. U. S.

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taken to have rejected the amendment, so far as conforming to the constitutional provision is concerned; for that makes no mention either of cases in which no votes are taken, or of those in which the votes are to reject, but only of votes which ratify. The amendment is to be valid *when ratified by three-fourths of the States.* So, of the third case, that of conditional ratifications; they do not come within the scope of the Constitution; do not conform to the conditions of the power vested in the States, and such votes must, upon the question of adoption, be accounted as either not cast at all, or as rejecting the amendment. It is only votes of the fourth description that can be counted, and States casting other votes than those are not reckoned at all save to determine the number necessary to complete the ratification.

There are, touching conditional ratifications, some precedents from the early days of the republic. When the Constitution was submitted to the States, in 1788, many of them were inclined to append conditions to their ratifications; but, upon full discussion by the best minds of that time, Hamilton, Madison and others, who doubted both the validity and the expediency of such ratifications, the same were made absolute, though with an understanding that amendments should be early adopted, to cover the points embraced in the conditions; an understanding which was carried into effect by the first Congress which met under the Constitution, in 1789. The result was, that the first ten amendments submitted by Congress were adopted by the States, and became a part of the Constitution. All votes, therefore, which do not ratify, or which ratify upon conditions, must stand on the same footing as though they had rejected; and neither they nor the States casting them are to be counted save for the purpose, as we have said, of fixing the proportional number of States necessary to ratify the amendment. Such has been, it is believed, the uniform practice of the State Department in relation to negative votes, or to those cases in which no action has been taken by the States; they have all been ignored, save that in one case relating, as we shall see, to the XIV Amendment, Secretary Seward stated the facts in regard to the votes of Ohio and New Jersey, which had first

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ratified and then attempted to recede from their ratifications, and of certain lately reconstructed States, in respect to which he had doubts, whether they should be counted or not, and therefore, brought the subject to the attention of Congress.

To the conclusion, that rejection forms no barrier in the way of afterwards ratifying an amendment, it may be objected, that it recognizes power in the States to ratify, but no power to reject a proposed amendment. This objection is specious, but it has no real foundation. To say that a State has no power to reject would be untrue; for it is an historical fact that, in point of form, many States have rejected amendments, and it would be puerile to contend that a right to pass upon a proposition does not involve a right either to reject or to ratify it. The real question here is, what, under the Constitution, is the consequence of rejection?—Does it, or does it not, as to the rejecting State, definitively settle the fate of the amendment? What we insist upon is, that a State has a right at some time, to ratify an amendment submitted to it. That is precisely what is asked of it by Congress, and it is that which the Constitution empowers it to do. At no time, therefore, can the authority charged with inspecting such votes refuse to receive one from a State until a ratifying vote shall have been received. This view of the question was well presented by Governor Bramlette, of Kentucky, to whom the resolutions above mentioned rejecting the XIII Amendment had been communicated for his approval, in a message to the Legislature of that State. Declining to return the same with his dissent, on the ground, that the action of the Legislature was complete without his approval, but yet expressing his dissatisfaction with them, and his regret that the amendment had not been ratified, he undertook, as requested in the second resolution, to forward them to the President and to the presiding officers of the two houses of Congress. In the course of his message, he said:—

"Rejection by the present Legislative Assembly only remits the question to the people and the succeeding Legislature. Rejection no more precludes future ratification than refusal to adopt any other measure would preclude the action of your successors. When ratified by the Legislatures of three-fourths

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of the several States, the question will be finally withdrawn, and not before. Until ratified, it will remain an open question for the ratification of the Legislatures of the several States. When ratified by the Legislature of a State, it will be final as to such State; and, when ratified by the Legislatures of three-fourths of the several States, will be final as to all. Nothing but ratification forecloses the right of action. When ratified, all power is expended. Until ratified, the right to ratify remains."[1]

2. The question in its affirmative form, whether a State, whose Legislature has ratified an amendment, has power to withdraw its ratification, or to reject the same, though not free from difficulty, admits, we think, of a satisfactory solution. The question has arisen in several cases, namely, in substance, in those of the slave States, which in 1832–3, and again in 1860 and 1861, by Conventions or Legislatures, sought, virtually or expressly, to repeal the ordinances of the Conventions which, in 1788, ratified the Federal Constitution, and it arose afterwards, in those of New Jersey, Ohio and New York, whose Legislatures sought to withdraw the assent previously given by those States, the first two to the XIV, and the last to the XV Amendment. The proceedings of the Southern Conventions in passing nullifying or secession ordinances, are so well known, that we shall not stop to describe them minutely, particularly as they did not relate to amendments, but to the Constitution itself. In the three Northern States, the proceedings were as follows: September 11, 1866, the Legislature of New Jersey, by resolution, ratified the XIV Amendment; a second resolution was passed in April, 1868, by a subsequent Legislature, to withdraw that ratification;[2] January 11, 1867, the Legislature of Ohio ratified the same amendment, but in January, 1868, in like manner attempted to withdraw its ratification.[3] The Legislature of New York, in 1869, ratified the XV Amendment, but afterwards, in January, 1870, by resolution attempted to withdraw its ratification.[4]

1. Acts, Gen. Ass'y, Ky., 1865, p. 157.
2. U. S. Stat. at Large, vol. xv, p. 708.
3. Id.
4. U. S. Stat. at Large, vol. xvi, p. 1131.

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These are believed to be the only instances in which the power to withdraw the assent of a State to an amendment has ever been claimed or sought to be exercised. Does that power exist under the Constitution? The question may be considered from the point of view, 1, of the States seeking to withdraw; and, 2, from that of the States which ratify.

1. The power of a State Legislature to participate in amending the Federal Constitution exists only by virtue of a special grant in that Constitution. It is a power which it could not assume under any notion of a general right to legislate, for that right is confined within State limits, and to the enactment of ordinary laws. An act of Congress, even, would not give it the power. The power, moreover, cannot be enlarged by implication, or by reason of any supposed, but unexpressed, intention of those who granted it, but must be strictly pursued. So, when the State Legislature has done the act or thing which the power contemplated and authorized—when the power has been exercised—it, *ipso facto*, ceases to exist, unless it be one of the terms of the grant, that it shall continue, with a view to its further exercise; which, in this case, is not pretended. Now, the language of the Constitution is, that an amendment proposed by Congress shall be valid, &c., "*when ratified by the Legislatures* of three-fourths of the several States." Suppose, after it has been ratified by three-fourths less one, the Legislature of another State notifies the Secretary of State, that it has also ratified it, has that amendment not been ratified by the Legislatures of three-fourths of the States? If so, it has become valid, as a part of the Constitution, and the power of the State Legislatures over the subject matter is gone. This no one, probably, would deny. Is it any more a power exercised, and, therefore, a power no longer existing, because other States have acted, or enough other States to have made the amendment a part of the Constitution? To hold thus would be to make the constitutional provision read, that the amendment should be valid, "when ratified by the Legislatures of three-fourths of the States, each adhering to its vote, until three-fourths of all the Legislatures should have voted to ratify." It is enough to say, that such is not the language of the Consti-

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tution; but that it shall be valid, when ratified by the Legislatures of three-fourths of the States.

2. The aspect of the question is the same when viewed from the side of the other ratifying States. The first State to ratify an amendment may reasonably be supposed to exert an influence upon the other States. While, doubtless, there is no contract,— for the States have in this matter nothing to make the subject of a contract—it can never have been intended, that a State, having once solemnly assented to a proposition submitted to the States, and thus, probably, induced like action of other States, should be at liberty, at any time thereafter, to withdraw such assent. If that were permitted, each State afterwards ratifying would have the same right, and one or more of them would be pretty certain to exercise it. Such a mode of transacting business of so transcendent importance would be puerile.

As the power of withdrawal, if it exist at all, must be implied as conforming to the intention of those who framed the Constitution, it is proper to inquire into the consequences of withdrawal, in order to determine the probability of such an intention. If a State may withdraw its ratification, at what time may it do it? If a change of circumstances should occur such as to make a change of its vote desirable, before three-fourths of the States have ratified, and if the power were conceded then to withdraw, why should not the same power be conceded, at any time after a three-fourths vote has been obtained, upon a like change of circumstances? The absurdity of such a rule was made apparent in 1860 and 1861, when the seceding States sought by virtue of it, to repeal their several acts of ratification of the Federal Constitution, passed by their Conventions, in some cases, seventy years before. What was then resisted as improper, in relation to the Constitution itself, cannot now be conceded as legal and proper in relation to amendments to the Constitution.

Another consequence is, that the power contended for would lead, as it has already done, to inextricable confusion, and civil war. It is only those who regard the Constitution as a treaty, basing that instrument upon compact, and finding in

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it the doctrine of State Sovereignty, who advocate the right to withdraw. They maintained, in 1789, the right of the States to ratify the Federal Constitution conditionally, and then, if the condition were not fulfilled, to recede from their ratifications; also, in 1832–3, maintained with South Carolina the right to nullify the laws of the United States, or virtually to repeal the ratification of the Constitution of 1788, if 'the mode and measure of redress' demanded, in relation to the Tariff, were not complied with by the United States; and who, in 1861, maintained the same right in relation to slavery.

Waiving the consideration of principles, however, the question may be regarded as settled by authority, if a resolution of Congress upon it is be taken as decisive. We have seen, that when the votes upon the XIV amendment were canvassed by the Secretary of State, doubts were entertained by him whether those of New Jersey and Ohio, whose Legislatures had first adopted, and then attempted to reject, that amendment, were to be counted as having adopted it. This doubt was settled by Congress, which declared by resolution, that they were to be counted among the ratifying States, which was accordingly done.

Two further questions may be considered: 1, When Congress has submitted amendments to the States, can it recall them? and, 2, How long are amendments thus submitted open to adoption or rejection by the States? 1. The first question must, we think, receive a negative answer. When Congress has submitted amendments, at the time deemed by itself or its constituents to be desirable, to concede to that body the power of afterwards recalling them, would be to give to it that of definitively rejecting such amendments; since the recall would withdraw them from the consideration of the States, and thus render their adoption impossible. However this may be, it is enough to justify a negative answer to say that the Federal Constitution, from which alone Congress derives its power to submit amendments to the States, does not provide for recalling them upon any event or condition; and that the power to recall cannot be considered as involved in that to submit, as necessary to its complete execution. It therefore cannot exist-

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2. The same consideration will, perhaps, furnish the answer to the second question. The Constitution gives to Congress the power to submit amendments to the States; that is, either to the State Legislatures, or to conventions called by the States for this purpose, but there it stops. No power is granted to prescribe conditions as to the time within which the amendments are to be ratified, and hence to do so would be to transcend the power given. The practice of Congress in such cases has always conformed to the implied limitations of the Constitution. It has contented itself with proposing amendments, to become valid as parts of the Constitution, according to the terms of that instrument. It is, therefore, possible, though hardly probable, that an amendment, once proposed, is always open to adoption by the non-acting, or non-ratifying States.

The better opinion would seem to be, that an alteration of the Constitution, proposed to-day, has relation to the sentiment and the felt needs of to-day, and that if not ratified early while that sentiment may fairly be supposed to exist, it ought to be regarded as waived, and not again to be voted upon, unless a second time proposed by Congress.

In discussing the question of the right of the States to vote upon proposed amendments at any time after the date of their proposal. it is proper to look into the consequences of such a right. If they have that right, there are now floating about us, as it were, *in nubibus*, several amendments to the Constitution proposed by Congress, which have received the ratification of one or more States, but not of enough to make them valid as parts of that instrument. Congress could not withdraw them, and there is in force in regard to them no recognized statute of limitation. Unless abrogated by amendments subsequently adopted, they are, on the hypothesis stated, still before the American people, to be adopted or rejected.

In 1873, the Senate of Ohio, acted upon the theory that, once proposed, an amendment to the Constitution is always open to ratification, and adopted a joint resolution ratifying the second of the twelve amendments submitted to the States by Congress, in 1789, providing that "no law varying the

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compensation of members of Congress shall take effect until an election for Representatives shall have intervened." This resolution, prepared by Madison, is an excellent one, but suppose it had been unjust, proposed, perhaps, in the interest of a section, or of a party, and failing at the time to receive the requisite majority, it had subsequently, by a concerted rally of those interested in its adoption, been carried, without discussion, or a clear expression of the existing public will. Is that a true construction of the Constitution which may be followed by so dangerous consequences? And, supposing the right referred to exists, by what majority shall the resurrected amendment be adopted? If proposed in 1789, when the States numbered but thirteen, and when a majority of ten States might have ratified the amendment, how many would have been requisite in 1873, when there were thirty-eight States which would have been called upon to vote? If the answer should be, that twenty-nine States must have voted to ratify, since that number was three-fourths of all the States, in 1873, however reasonable such an answer might seem, it would be founded upon no statute, or custom of the country, and, therefore, different opinions as to its reasonableness might well be entertained. Hence the danger of confusion or conflict. We discuss this question here merely to emphasize the dangers involved in the Constitution as it stands, and to show the necessity of legislation to make certain those points upon which doubts may arise in the employment of the constitutional process for amending the fundamental law of the nation. A constitutional statute of limitation prescribing the time within which proposed amendments shall be adopted or be treated as waived, ought, by all means, to be passed.

In the foregoing discussion, no mention has been made of the powers of State Conventions. If an amendment to the Federal Constitution should be proposed by Congress, and submitted to State Conventions, instead of to the Legislatures, the powers and disabilities of the two classes of bodies, in respect to the amendment, would, it is conceived, be precisely the same. Compare R. R. Co. *v.* McClure, 10 Wall. R., 511.

John A. Jameson.

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ADMISSION OF WOMEN TO THE BAR.

The efforts of women to gain admission to the Bar in the United States, first took practical shape and became a success, according to the best of my information, in the year 1869.

Phoebe W. Couzens' application for admission to Washington University Law School at St. Louis had been favorably acted upon in 1868, and Elizabeth (Lila) Peckham had been, for some time, a law student in Milwaukee, and been generally known to the public as such. Miss Peckham died before admission, but she had attracted much attention by her ability.

In June, 1869, Arabella A. Mansfield, a graduate of Iowa Wesleyan Seminary, was admitted to the Iowa Bar at Mt. Pleasant, Iowa, and this, notwithstanding the statute provided only for the admission of "white male citizens." The Examing Committee in its report, which is of record, said, "Your Committee have examined the provisions of Section 2,700 of Ch. 114, of the Revision of 1860, concerning the qualifications of attorneys and counselors in this State, but in considering the section in connection with division 3 of Section 29, Ch. 3 of the Revision, on construction of statutes, we feel justified in recommending to the Court that construction which we deem authorized, not only by the language of the law itself, but by the demands and necessities of the present time and occasion. Your Committee take unusual pleasure in recommending the admission of Mrs. Mansfield, not only because she is the first lady who has applied for this authority in this State, but because

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in her examination, she has given the very best rebuke possible to the imputation that ladies can not qualify for the practice of law." Section 2,700 provides for the admission of "white male persons." Section 29 provides that "words importing the masculine gender only may be extended to females." George B. Corkhill, afterward U. S. Dist. Att'y., for the District of Columbia was one of the signers of this report. Thus it will be seen that the first woman who applied for admission met with no opposition.

In August, 1869, Myra Bradwell of Chicago, was examined and her competency certified in the usual way to the Supreme Court of Illinois, and a motion made for her admission. The Court informed her it would be compelled to deny her application, because of the disabilities she labored under as a married woman in regard to making contracts, but being met by an exhaustive argument on this point, the Court abandoned its first reason and refused admission on account of sex. It decided that inasmuch as women were not known as attorneys at Common Law, it was sufficient reason for the Court to decline to exercise its discretion and admit them; that the matter ought to be decided by the Legislature. Mrs. Bradwell appealed from the decision to the Supreme Court of the United States, claiming that it was contrary to the Fourteenth Amendment, and the Fourth Article of the Federal Constitution to deny her admission for the reasons given. Mr. Justice Miller delivered the adverse opinion of the Court, stating that admission to practice in the Courts of a State was not one of the privileges belonging to citizens of the United States which States were forbidden to abridge. Mr. Justice Bradley said, it was not one of the privileges of *women* citizens and enlarged upon the functions of womanhood and laws of the Creator, being, it is supposed, fully informed upon the latter. The report of the case, 16 Wall. 130, states that Chief Justice Chase "dissented from the judgment of the Court and all the opinions." Mrs. Bradwell has since devoted herself to the publication of the Chicago Legal News, Statutes, Law Reports, etc. Her daughter Bessie (now Mrs. Helmer,) graduated from the Union College of Law of Chicago, and was admitted to the

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Bar in 1882, and is associated with Judge and Mrs. Bradwell in the work of the Legal News and the preparation of Bradwell's Appellate Court Reports.

Lemma Barkaloo of Brooklyn, New York, being refused admission to the Law School of Columbia College entered the Law School of Washington University at St. Louis in the Fall of 1869, and in March, 1870, on examination, was admitted to the Circuit Court at St. Louis, and enrolled as an attorney in the Supreme Court of Missouri. Miss Barkaloo tried the first case by a woman attorney in this country, so far as I am informed. She died of typhoid fever in September, 1870. At a meeting of the St. Louis Bar, in reference to her death, it was resolved "that in her erudition, industry and enterprise, we have to regret the loss of one who in the morning of her career, bade fair to reflect credit upon our profession and a new honor upon her sex."

In June, 1870, Adah H. Kepley of Effingham, Ill., graduated at the Union College of Law, Chicago, but under the holding in Mrs. Bradwell's case could not be admitted. In November, following, a motion was made in the Court at Effingham, that Mrs. Kepley be allowed to practice at that Bar, and Judge Decius in entertaining the motion said, "that while the Supreme Court had refused license to a woman in another case, he yet thought the motion was proper, and in accord with the spirit of the age, and if it was the unanimous sense of the Bar, he did not feel at liberty to deny the motion," and he directed the order entered, allowing her to practice. Mrs. Kepley has since been admitted to the Supreme Court, and to the full privileges of an attorney.

In May, 1871, Phoebe W. Couzens graduated from Washington University Law School, St. Louis and was admitted to the Missouri Bar, the event receiving a great deal of notice from the public press. A year later, while travelling in Utah, she was accorded the complimentary attention of admission to the Utah Bar, Georgia Snow, daughter of the Attorney General of the Territory being admitted at the same time. Miss Couzens had been connected with the woman suffrage movement before admission, and she has made that her principal work since.

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About the same time that Miss Couzens was admitted in Missouri, Sarah Kilgore graduated from Michigan University Law School, and was admitted to the Michigan Bar.

In the Fall of 1871, Alta M. Hulett, after spending a year and a half as a student in the law office of Hon. Wm. Lathrop of Rockford, was refused admission in Illinois, and at once prepared a bill providing "that no person shall be precluded or debarred from any occupation, profession or employment (except military) on account of sex," and this became the law in March, 1872. Miss Hulett lectured on the subject while the bill was pending, and met with a hearty response from the public. She next spent a year in the law office of Sleeper and Whiton, and was admitted on her 19th birthday, June 4, 1873. From that time until the sickness that caused her death, she was in active practice in Chicago, and very successful. Shortly after admission to the State Court, she was admitted to the United States Courts for the Northern District of Illinois, being the first woman admitted to a U. S. Court, I think. Her death occurred in the Spring of 1877. Miss Hulett was a young woman of remarkable energy and push, and of excellent ability and business judgment. She had tact and skill in the acquisition and management of business, and was a capable and efficient lawyer. She had a wonderful faculty for making friends who interested themselves in her success, and in the three years of her practice, acquired an amount of profitable business, that is not generally expected in law practice until after a much longer period. Her successful, and it may fairly be termed brilliant career, had a marked influence in producing a favorable attitude of the public toward women practitioners.

In the early part of 1872, Charlotte E. Ray, a colored woman and graduate of Howard University was admitted to the Supreme Court of the District of Columbia. She had an office in Washington, for a time, but now lives in New York City.

In October, 1872, Clara H. Nash, in partnership with her husband F. C. Nash, at Portland, was admitted to the Supreme Judicial Court of Maine.

In April, 1873, Nettie Cronise, (now Lutes) was admitted in Ohio, and immediately began practice in Tiffin. In Sep-

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tember, of that year, her sister Florence was also admitted, and the two were in partnership in practice three or four years, and until Miss Nettie's marriage with N. B. Lutes, a lawyer of Tiffin, with whom she has since been associated under the name of Lutes & Lutes. Florence Cronise continues in practice by herself. Mrs Lutes, not long after her admission was appointed by the Court to examine applicants for admission, and Florence Cronise has since acted in the same capacity. The Cronises and Miss Hulett were about the first, probably the first women to open law offices and begin an active, energetic practice of the profession.

In September, 1873, Belva A. Lockwood upon graduation from the National University Law School, was admitted to the Supreme Court of the District of Columbia. In May, 1874, she was denied admission to the U. S. Court of Claims, because, it was claimed, of common law disabilities; but the same year was admitted to an U. S. Court for the Western District of Texas, a Court that had just the same authority on the subject and no more. In November, 1876, she was refused admission to the United States Supreme Court, Justice Miller dissenting. Mrs. Lockwood next directed her efforts to securing an Act of Congress preventing the exclusion of women on account of sex, and the Act was passed in February, 1879. Mrs. Lockwood was soon after admitted to the U. S. Supreme Court and to the Court of Claims. She has been admitted, at least allowed to practice in the Circuit Court of St. George County, Maryland.

In June, 1874, Lavinia Goodell was admitted to the Circuit Court of Rock County, Wis., and began practice at Janesville. Having business in the Supreme Court the year following, she applied for admission there, and was refused, although it was the rule of that Court, to admit attorneys from the Circuit Courts, as a matter of course. Judge Ryan asserted that the common law had excluded women ever since Courts administered the common law, and said that if a change was to come, he would have no voluntary part in bringing it about. He even intimated that the Court would not be bound to admit, even if an act were passed requiring it, but the act was promptly passed,

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and Miss Goodell admitted. Miss Goodell continued in practice until her death from sciatic rheumatism, March 31, 1880. She had a judicial mind and extensive legal learning, and her arguments evinced a thorough appreciation of the genius and spirit of law. Before preparing for the Bar, she was several years employed in the literary work of Harper Bros., New York.

In the Fall of 1874, J. Ellen Foster of the firm of Foster & Foster, Clinton, Iowa, was admitted in Iowa. She has been engaged in practice and in temperance work, giving a great deal of time to temperance work, in which she was engaged before admission.

In December, 1874, Carrie Burnham, (now Kilgore) of Philadelphia, began the long and tedious warfare that she has been obliged to wage for admission in Pennsylvania. The Board of Examiners refused to examine her, because there was "no precedent for the admission of a woman to the Bar of this County," and the Court refused to grant a rule on the Board requiring them to examine her. Mrs. Kilgore then tried to have a law passed forbidding exclusion on account of sex, but the Judiciary Committee of the Senate took the position that the law as it stood was broad enough, and so it would seem to be. The Act of 1834, declares "The Judges of the several Courts of Record in the Commonwealth shall respectively have power to admit a competent number of persons of an honest disposition, and learned in the law, to practice as attorneys in their respective courts." The Senate finally passed the clause desired, at two or three sessions, but it was never reached in the House. Finally Mrs. Kilgore gained admission to the Law School of the University of Penn. in 1881, where she had previously been denied, and by virtue of her diploma from there in 1883, was admitted to the Orphans' Court of Philadelphia. She was then admitted to one of the Common Pleas Courts, but denied admission to the other three, though it is the custom when a person has been admitted to one, to admit to the rest as a matter of course. As soon after admission to the Common Pleas Court as the law allows, two years, and in May of this year, 1886, Mrs. Kilgore applied and was admitted to the Supreme Court of the State, and by virtue of this admission,

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all the lower Courts are now compelled to admit her. Thus Pennsylvania has accomplished after twelve years, what Iowa did seventeen years ago without any ado and with a statute that might have afforded a reasonable ground for refusal, which the Pennsylvania statute did not.

In the Winter of 1870 and 1871, M. Fredrika Perry began her law studies in the office of Shipman & Loveridge, at Coldwater, Mich. She spent two years there as student and clerk, and then two years in the Law School of Mich. University. Upon receiving her diploma from the Law School in March, 1875, she was admitted to the Michigan Bar, and in September following to the Illinois Bar, and located and began practice in Chicago. A short time after, she was, on motion of Miss Hulett, admitted to the U. S. Circuit and District Courts for the Northern Dist. of Illinois. She continued in practice in partnership with Ellen A. Martin under the name of Perry & Martin, until her deatn, (the result of pneumonia) June 3, 1883. Miss Perry was a successful lawyer, and her success was substantial. She combined in an eminent degree the qualities which distinguish able barristers and jurists; her mind was broad and catholic, clear, quick, logical and profound; her information both on legal and general matters was extensive. She had a clear, strong and pleasant voice, and was an excellent advocate, both in presenting the law to the court and the merits of a case to the jury. She was a skillful examiner of witnesses, and understood as few attorneys do, save practitioners who have grown old in experience, the nice discriminations of Common Law Pleadings and the Rules of Evidence, the practical methods by which rights are secured in courts. All her work was done with the greatest care. She was engrossed in the study and practice of law, appreciating its spirit and intent, and gained steadily in efficiency and practical power, year by year. She had the genius and ability for the highest attainment in all departments of civil practice, and joined with these the power of close application and hard work. She belonged to the Strong family which has furnished a great deal of the legal talent of the United States. Judge Tuley, before whom she often appeared, said of her at the Bar

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meeting called to take action upon her death, "I was surprised at the extent of her legal knowledge and the great legal acumen, she displayed."

Soon after Miss Perry began her studies with Shipman & Loveridge, Ellen A. Martin entered the law office of Cook & Lockwood, Jamestown, New York, and remained there as student and clerk for two years. She then spent two years, in the Law School of Michigan University, graduating, and being admitted to the Michigan Bar, at the same time with Miss Perry. A few months later, she was admitted to the Illinois Bar, and located in Chicago, in company with Miss Perry where she has since remained. Both Miss Perry and Miss Martin were refused admission to the Harvard Law School, the reason privately assigned being that it was not considered practicable to admit young men and young women to the Law Library at the same time, and it was not considered fair to admit to the Law School without giving the privileges of the Library. I believe the authorities have not yet found any way to get around or over this mountain of difficulty.

In June, 1875, Emma Haddock of Iowa City, Iowa, associated in practice of law with her husband Judge Haddock, graduated from the Law Department of the State University, and was admitted to the State Bar. In November following, she was admitted to the U. S. Circuit and District Courts at Des Moines. In June, 1878, Mrs. Haddock was appointed by the Supreme Court to examine students of the University for graduation and admission to the Bar, and was re-appointed for two years following.

In the Summer of 1875, Elizabeth Eaglesfield was admitted to the Bar at Terre Haute, Indiana, the law only providing for admission of voters. The Court held that a law requiring them to admit voters, did not prevent their admitting persons who were not voters. Mrs. Eaglesfield is a graduate of both the Literary and Law Departments of Michigan University, and practices in Terre Haute.

In 1876, Mary E. Foster, a graduate of the University Law School, was admitted, and opened an office at Ann Arbor, Michigan.

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In 1877, Martha A. Dorsett, previously admitted in Iowa, asked admission in Minnesota, and was refused. She then secured the passage of a law which dropped the word "male" from the statute, and was admitted under the new law.

In January, 1878, Tabitha A. Holton was admitted to the Supreme Court of North Carolina, on motion of Judge Albion Tourgee', then practicing in Raleigh. Miss Holton afterward practiced in Dobson, in partnership with her brother.

In July, 1878, Kate Kane, who had spent one year in the Michigan University Law School, and one year, as student and clerk in the law office of A. A. Jackson at Janesville, Wis., was admitted at Janesville. Miss Kane practiced in Milwaukee five years, and then located in Chicago, where she has since practiced.

In 1879, Angie King was admitted in Wisconsin and Clara S. Foltz and Laura De Force Gordon in California, and Mrs. M. B. R. Shay in Illinois. I understand the passage of a law was necessary in California, before the Courts would admit women, but I have no definite information. Miss King practices in Janesville. She was in partnership with Miss Goodell under the name of Goodell & King before Miss Goodell's death. Mrs. Foltz and Mrs. Gordon practice in San Francisco. They were first known to the public in a legal capacity, by their arguments on the application for a mandamus to compel the opening of the Hasting's Law School of California University to women students. Mrs. Gordon was admitted to the Supreme Court of the United States in February, 1885. Mrs. Shay lives at Streator and has written a book entitled "Students' Guide to Common Law Pleading," published by Callaghan & Co. She is a graduate of the Bloomington Law School.

In 1880, Cora A. Benneson of Quincy, Ill., graduating from the Michigan University Law School was admitted to the Michigan and Illinois Bars. Terrie M. Sumner in partnership with her husband at Waukesha, was admitted in Wisconsin.

In 1881, the following women were admitted: Jessie M. Johnson of the law firm of Johnson & Johnson, Knoxville, Iowa, Ida M. Tillottson, Millbrook, Kansas, and Edith Sams

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in Ohio. Miss Sams was in partnership with Florence Cronise at Tiffin until her marriage in 1883, since which time she has been in business with her husband, C. A. Seiders, a lawyer at Paulding, Ohio.

In 1882, there were admitted, besides Bessie Bradwell before mentioned, Lelia G. Robinson, Boston, Mass., Mary Hall, Hartford, Conn., Marilla M. Ricker, Washington, D. C., and Ada M. Bittenbender of the firm of H. C. & Ada M. Bittenbender of Lincoln, Nebraska, and I think Flora M. Wagstaff of the firm of Wagstaff & Wagstaff, Paola, Kansas. Miss Wagstaff was practicing then. The Massachusetts Court refused Miss Robinson admission until a legislative act was passed requiring it. In Connecticut, under a similar state of the law, Miss Hall was admitted without legislative action. I am told that M. Josephine Young was admitted in 1882 or before and practiced law in Sacramento, California, in connection with her husband; also that there was a woman practicing in Waupaca County, Wisconsin, before that time.

Since 1882, I have not kept track of admissions, but have learned incidentally of the following, which I name as nearly as known to me in the order of admission; Cora Hurtz, Oshkosh, Wisconsin, Louise H. Albert, Cedar Rapids, Iowa, Maria E. De Geer, Syracuse, Kansas, Mattie H. Strickland, St. Johns, Michigan, Mary A. Leonard, Seattle, Washington Territory, Mary P. Spargo, Cleveland, Ohio. Alice C. Nute, Chicago, Illinois, Mary Geigus Coulter, Freeport, Illinois, Kate Stoneman, Albany, New York, Catharine V. Waite, Chicago, Illinois, and Catharine G. Waugh of Rockford, Illinois. Mrs. Leonard, after admission in Washington Territory, in 1885, was refused admission to the Oregon State Courts but immediately admitted to the United States Courts there. Miss Nute studied in the office of Judge C. B. Lawrence, until his death and afterward in the office of Goudy & Chandler, Chicago. She was a leading court reporter for several years before admission and had an excellent opportunity for learning court practice, which she improved. Miss Stoneman was refused admission in New York until the Legislature changed the law, which it did promptly. Mrs. Waite was

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one of the early graduates of Oberlin College, and has been a student of law and familiar with practice many years, though not completing a course of study until June, 1886, in the Union College of Law Chicago. Miss Waugh graduated in the Union College of Law, at the same time with Mrs. Waite.

It is not likely I have obtained the names of all the women who have been engaged in practice, even down to 1883. It is difficult to obtain information of persons so widely scattered. There have been many women who have pursued law studies and been admitted, but for other purposes than the practice of law, and those are not included here. I have intended to include only those who have engaged at some time, in some line of lawyer's work or been instrumental in opening the way for the admission of women to the Bar or to the Law Schools.

Under substantially the same laws, no statute any where requiring their admission at first, women were admitted in some states on the first application and refused in others; admitted by one judge and denied by his successor, as in Ohio, when Agnes Scott applied in 1878 for admission to the same court where the Cronises had been practicing for five years; admitted to one court of a City, and denied admission to others of the same grade; admitted to several United States Circuit and District Courts, and denied admission to the United States Court of Claims and Supreme Court.

Women were admitted on their first application, without any thing in the law specially requiring it, in Iowa, Missouri, Michigan, Utah, District of Columbia, Maine, Ohio, Wisconsin, Indiana, Kansas, Connecticut, Nebraska, Washington Territory, and to the United States Circuit and District Courts in Illinois, Iowa and Texas. In Wisconsin and Ohio where, after some women had been admitted, others were refused by other judges, the legislatures at once passed laws forbidding their exclusion. In Illinois, Minnesota, Massachusstts, Oregon, New York, the United States Supreme Court and Court of Claims, and I think in California, the courts would not admit women until laws were passed providing for it and in all cases, unless it be Oregon, the legislatures promptly passed them. In Congress the law was delayed for a time, the judicary com-

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mittee of the Senate holding that no special legislation was necessary; that the U. S. Courts already had sufficient authority to admit women. In Pennsylvania, the admission of women has finally been under the original law passed in 1834, for the admission of "persons." The first time the matter could be acted upon by the Supreme Court of Pennsylvania, it acted favorably.

The statutes in the States where women applied for admission have been of three kinds; those which provided for the admission of voters, as in Indiana; those which provided for the admission of "male" persons or citizens, as in Iowa, Minnesota, California and New York; and those which provided for the admission of "persons" or "citizens," without words of limitation, as in all other cases where application was made. In Indiana, the Constitution said, "voters shall be admitted," and the Court at Terre Haute said this *required* them to admit voters, but did not prevent their admitting others persons, and admitted a woman. Iowa decided that under its rules of construction, it could include women, and, as it was consistent with times and circumstances to do so, it would. The Legislatures of Minnesota, California, and New York, dropped the word "male" from the statute and New York added, that race or sex should not constitute a cause for refusing admission to the Bar.

In the states where the provision was for the admission of "persons" or "citizens," there were no words other than these, providing for the admission of women, and there were no words excluding them. Under this condition of the law most of the courts where women applied, at once admitted them and spent no time upon fine spun theories, but a few of the courts saw great obstacles in the way and refused admission. Most of the latter endeavored to maintain their position upon some theory of the common law; some said that at common law a woman could not hold office, and an attorney was an officer of court; others said that the disabilities of a married woman in regard to making contracts would render her unable to perform the duties of an attorney; others, that as women were not know as attorneys at common law, and were not thought of as

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attorneys when our statutes were passed, it could not have been within the intention of the legislature to include them, and therefore, they were not included in the words "persons" and "citizens" in the statutes regarding admission of attorneys, and it would be an act of judicial usurpation for the court to admit them.

The favorable decisions of a majority of the courts, in advance of legislation requiring the admission of women, support the opinion that there was no common law on the subject, at least that there was nothing against it. Women were never excluded at common law nor ever admitted; they had not applied; there had been no action, and could not be said to be any law; it was a new case, competent for the courts to act favorably upon, if they desired. Judge Thayer said in admitting Mrs. Kilgore to Common Pleas No. 4, in Philadelphia, "To decide new questions as they arise out of the changing conditions of society, and to define legal rights heretofore undetermined by any statute or legal decision can not be said in any just sense, to be an usurpation of legislative powers nor an unwarranted exercise of judicial authority."

It is not easy to understand how any principle of common law would be contravened by the admission of women. Even married women could be agents at common law and bind their principals, and their husbands not be liable from their misconduct; and an attorney at law is an agent, an agent required to have a license from court in order to act. It is true that he is an officer of Court, but he is this hardly more than in name; he exercises a privilege or franchise rather than an office. His duty as an officer consists mainly, if not wholly in assisting the court to a fair and full understanding of the matters in controversy before it. Whatever may be said about the ability of women to hold office at common law, (and the point claimed is not admitted,) it is certainly straining a point very much to use it as a reason for excluding women from the practice of law.

The disabilities under which a married woman labored in regard to making contracts would in reality have little or nothing to do with her efficiency as an attorney. The point is

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well considered by Judge Pierce in his opinion dissenting from the decision refusing Mrs Kilgore admission to one of the Philadelphia Courts. He says, "There is certainly no legal disability by reason of her sex in an unmarried woman being a member of the bar. But it is said that a married woman, by reason of her coverture, cannot perform the duties of the office. Before considering this question, let us inquire what legal offices or functions a married woman can perform. At law she can be an executrix, administratrix, trustee, guardian, agent, and even agent of her husband. But it is supposed that, by reason of her inability to make contracts in certain cases, she cannot fulfill the office of attorney-at-law. Why is there any greater disability by reason of her coverture, to act as an attorney-at-law than as an executrix, administratrix, guardian or trustee? In each case she is acting on behalf of others, and is held to the same responsibility as if she were a *feme sole* or a man. Her responsibility does not rest in contract, but in the good faith with which she executes the trusts resposed in her. For any failure of duty or breach of trust she is not held liable as for breach of contract, but in consequence of the neglect or violation of the duties imposed on her by the assumption of the trust. And for any failure of duty in her office of attorney-at-law, she would be subject to the same liabilities and penalties as if she were a *feme sole* or a man, and for the same reason, to-wit: a breach of trust. The argument attempted to be drawn from her inability to contract has no more place in the consideration of this question than it has in the question of her ability to act as executrix, administratrix, guardian or trustee."

The other points of objection are considered in the case of Mary Hall, reported in 50 Conn. 131. Justice Park said in giving the opinion of the court, that "the statute provides that the Superior Court may admit as attorneys, such persons as are qualified therefor, agreeably to the rules established by the judges of said Court. This statute has come down, with some changes, from the year 1750, and in essentially its present form from the year 1821. Held that under it a woman could be admitted as attorney."

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The Court said "if we hold that the construction of the statute is to be determined by the admitted fact that its application to women was not in the minds of the legislators when it was passed, where shall we draw the line? All progress in social matters is gradual. We pass almost imperceptibly from a state of public opinion that utterly condemns some course of action to one that strongly approves it. At what point in the history of this change shall we regard a statute, the construction of which is to be affected by it, as passed in contemplation of it? When the statute we are now considering was passed, it probably never entered the mind of a single member of the legislature that black men would ever be seeking admission under it. Shall we now hold that it can not apply to black men." * * * "Events that gave rise to enactments may always be considered in construing them. This is little more than the familiar rule that in construing a statute, we always inquire what particular mischief it was designed to remedy." * * "But this statute was not passed for the purpose of benefiting men as distinguished from women. It grew out of no exigency caused by the relation of the sexes. Its object was wholly to secure the orderly trial of causes and the better administration of justice." * *

"We are not to forget that all statutes are to be construed, as far as possible, in favor of equality of rights. All restriction upon human liberty, all claims for special privileges are to be regarded as having the presumptions of law against them and as standing upon their defense, and can be sustained, if at all by valid legislation, only by the clear expression or clear implication of the law." * * "We have some noteworthy illustrations of women as eligible or appointable to office under statutes of which the language is merely general. Thus women are appointed in all parts of the country as postmasters." * * "The language of the Act of Congress of 1825 is, that the Postmaster general shall establish post-offices and appoint postmasters. Here women are not included except in the general term "postmasters," a term which seems to imply a male person, and no legislation from 1825 down to the present time authorizes the appointment of women." * * "The

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same may be said of pension agents." * * "Public opinion is every where approving of such appointments. They promote the public interest which is benefited by every legitimate use of individual ability, while mere justice, which is of interest to all, requires that all have the fullest opportunity for the exercise of their abilities."

The opposite conclusions to which different courts will sometimes come, depending upon whether they are dominated by a liberal and progressive spirit or a narrow and dogmatic one, is well illustrated by the decisions of the Connecticut and Massachusetts Courts upon the construction of the words "persons" and "citizens" in the statutes upon attorneys. The Massachusetts Court considered in the case of Miss Robinson, (131 Massachusetts 376) that since the word "citizen" was introduced into the statute long ago, and its use in recent times was but a repetition, the re-enactment of the statute without words expressly extending its provisions to women, and since the time when other statutes had expressly modified the rights and capacities of women in other important particulars, tended rather to confute than advance the theory that the legislature intended these words to comprehend women. The Connecticut Court said that inasmuch as the legislature had revised the statutes since women began practicing law in different parts of the country, and had not inserted words of exclusion or limitation, it must be presumed that they left this statute unchanged with full knowledge that the statute as it stood, was broad enough to include women, and it must be presumed to express the legislative intent of to-day rather than that of perhaps a hundred years ago, when the statute was originally enacted.

The true reason for the adverse decisions that have claimed common law objections, and a reason more or less plainly indicated in the opinions given, has been, not so much that there was anything in the law against it, as that, in the mind of the court, it was not considered woman's proper work to practice law. The Albany Law Journal in summarizing the objections of one of the Philadelphia judges, summarizes substantially, most of the adverse decisions in cases where the word "male"

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did not appear in the statute. The Journal says, "The court put the denial partly on the ground of protection to women, partly on the ground of nature's order, and partly on the ground of shock to sentiment." The Journal adds, "one would think the Philadelphia Common Pleas People were living forty years behind the times."

Women are now admitted every where in this country that they have applied, I understand, unless it be in the state courts of Oregon.

It will be noticed from the foregoing that the opposition to the admission of women has not been general, but quite the contrary. They have been admitted in the great majority of cases on their first application, and when the court has not been equal to the emergency the legislature has. The bench and bar as a rule have shown a spirit of cordiality toward women attorneys, and a disposition to help rather than to hinder.

The fact that words of commendation have been used herein in regard to the dead and not in regard to the living, should not be taken as a reflection upon the living. Most of the women attorneys have been persons of ability, have appreciated the importance of their work, and have done carefully and well what they have undertaken. It can not be denied that there have been a few, who have been principally engaged in making what has sometimes been termed a "racket," but the proportion of such lawyers among women is no larger than among men, nor indeed as large.

Since the foregoing was ready for the press, I have learned that Mattie K. Pearce, and Miss Burlingame, graduates of Michigan University and members of the Michigan Bar, contemplate practicing law—the latter in Joliet, Illinois.

The investigation and correspondence necessary for the preparation of this article, were mainly carried on by Miss Perry in 1882. I am also indebted for information to the files of the Chicago Legal News.

Ellen A. Martin.

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THE MEDICO-LEGAL DEPARTMENT.

EDITED BY MARSHALL D. EWELL, M. D.

THE MEDICO-LEGAL SOCIETY OF CHICAGO.

The regular quarterly meeting of this society was held in the evening of the 4th. of Sept. at club room 4, of the Grand Pacific Hotel. After the transaction of routine business, the paper of the evening was read by M. D. Ewell, Esq., upon the subject, "Compensation of Medical Experts."

This society was organized May 15, 1886, with a membership of nearly one hundred of the leading physicians of this city with the co-operation of a few lawyers. Its object is stated in its constitution to be "the investigation, study and advancement of the science of medical jurisprudence, the punishment of unprofessional and criminal practices by members of the medical and legal professions, the prevention of black mailing and the procuring of such legislation as may be necessary to secure the ends above enumerated." Any regular practitioner of medicine or lawyer in good standing may, after having been duly elected to membership, became a member of the association by the payment of the sum of five dollars as initiation fees and signing the constitution. The annual dues are five dollars.

It is expected that several papers will be presented at the next meeting upon a variety of important topics by eminent specialists who have made the subjects discussed the object of many years study. Members of the bar who are interested in medical jurisprudence will find it to their interest to become members.

The officers for the current year are

D. A. K. STEELE, President.
CHAS. W. EARLE, 1st Vice-President.
BOERNE BETTMAN, 2d Vice-President.
E. WYLLYS ANDREWS, Treasurer.
M. D. EWELL, Secretary.

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Limits of Normal Vision.

In Vol. 1 of Tidy's Legal Medicine, p. 248, we find the following statement: "Passing from microscopic objects, we note that at a distance of one foot a person with normal sight can scarcely see an object less than the one-twenty fifth of an inch. At greater distances the size must increase comparatively."

This statement seemed so much opposed to my experience that I have submitted the following described tests to-nineteen different persons of ages ranging from seventeen to upwards of forty with the results given in the accompanying table.

No. 1. consisted of a piece of black paper approximately one millimeter (one-twenty-fifth inch) square pasted upon a white back-ground. No. 2. consisted of a similar white square upon a black back-ground. No. 3. consisted of a black line approximately one millimeter broad upon a white back-ground. To be more exact the dimensions of No. I. were 1.08 mm, x 1.04 mm.; No. II. 1.08 mm. x 1.98 mm. No. III. 1.12 mm. in width.

The manner of making the tests was to hang the cards in a good light, not artificial, and approach them from such a distance that they were invisible, and note the respective distances at which they became visible, and at which the shape of the squares could first be defined.

The accompanying table gives the results of the several tests: The first column gives the name, the second the occupation and age, the third the condition of eyes when known, the fourth the distance in feet and inches at which the black square first became visible, the fifth the distance at which the black square could be defined, the sixth and seventh give the same particulars as to the white square, and the eighth gives the distance at which the line first became visible.

A large number of other tests were made with another set of cards, but unfortunately one of the students lost them before they had been measured, so that the results are not included in the table. There are however, in the accompanying table a sufficient number of observations to show pretty nearly the average limit of normal vision and to demonstrate the gross inaccuracy of the above quotation from Dr. Tidy's work. Some interesting and obvious deductions are, readily made from the accompanying table but lack of space and time will prevent their being presented in this article.

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TABLE OF OBSERVATIONS.

NAME.	OCCUPATION.	AGE.	EYES.	No. I., VISIBLE.	No. I., DEFINED.	No. II., VISIBLE.	No. II., DEFINED.	No. III., VISIBLE.	REMARKS.
J. C. Barnard	Law Student.	23	Normal.	19′—3″	4′—6″	13′—2″	4′—1″		
W. M. McEwen	" "	22	"	19 7	4 6	28 1	5 6	69′—8″	
Frank D. Gassmore	Not known.	17	"	28 0	12 3	27 0		64 6	
Percival Steele	Law Student.	21	"	23 0	5 0	25 0	12 0	80 0	
Geo. B. Finch	" "	23	"	34 0	9 0	28 0	10 0	90 0	
Ella M. Browning	Not known.	24	"	28 0	5 0	21 0	6 0	75 0	
Catharine G. Waugh	Law Student.	23	"	27 0	4 6	24 0	7 0	69 0	
Sam. B. King	" "	21	"	24 6	5 3	24 4	5 0		
G. E. Deming	" "	23	"	26 8	5 9	23 11	4 9	60 0	
Jas. E. Davis	" "	25	"	34 0	6 0	26 6	4 6	62 0	
O. A. Lucas	" "	24	"	23 9	4 9	24 0	5 1	98 3	
E. G. Aborn	" "	26	"	26 0	5 8	15 6	3 10	108 0	
Frank C. Caldwell	" "		"	25 2	5 10	24 2	4 11	63 0	
Chas. B. Moore	" "	20	"	21 3	5 3	17 1	4 4	48 6	
G. W. Hough	Astronomer.		"	20 9	5 3	16 6	5 3		Room not very well lighted.
Sidney Stein	Attorney.		"	23 9	2 8	16 3	3 2		
Jno. H. Rollins	"		"	36 0	5 11	28 9	5 6		1] Corrected by glasses.
M. D. Ewell	"	42	Hypermetropic.	29 0	5 2	24 0	4 6	78 7	
David J. Revell	Law Student.	22	One dioptric [1 "	31 0	8 0	27 0	20 0 [2	83 0	2] This is clearly an error, though it was so reported.
Mean distance				26′—4″	5′—10″	22′—11″	5′—7″	75′—0″	

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EDITORIAL NOTES.

REFORM IN THE STATUTES OF DESCENT AND WILLS, SO AS TO INSURE A MORE GENERAL DIVISION OF PROPERTY AMONG THE PEOPLE.

At the meeting of the Illinois State Bar Association last January, the committee on law reform recommended, among other things, a most important change in the statutes of descent and wills, which we think ought to receive profound consideration. The recommendation is as follows:

"That the statutes of descent of property and of wills be so changed as to limit the amount that any one may take by descent from the same person or by bequest or devise, except for educational and other charitable purposes."

The committee proceed to say that they would not recommend such a limitation as would carry the estate away from the kin of the decedent, or that would change the law as to the great majority of estates, but they would apply the limitation to those "abnormally large fortunes" which by being kept together as they may be as the law now stands "menace the political power of the state."

The exact way in which such estates should be divided—that is among whom as heirs and in what proportions is not set forth. The committee seem to have thought it better to leave the details to the wisdom of the legislature. They do however, by way of example, tell us where the limitation might begin, and how it could be applied. They say that the amount a child might inherit might be limited to $500,000; those standing in the next degree of kinship $100,000; if there is more than enough to satisfy those in that degree the overplus, to go to the next, with a like limitation, and so on until the estate is exhausted.

Suppose the estate to amount to $1,000,000 and that the decedent left one child and brothers and sisters and other kinsmen; the child would take $500,000 and the remaining $500,000 would go, first to the brothers and sisters not exceeding $100,000 to each, and if there remained a balance, that would go

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to those standing in the next degree of kinship to the decedent with a like limitation, and so on until the whole estate is exhausted. If there are no heirs or after paying off all who are entitled to share in the estate there still remains a balance, this may go to the state or under the law as it now stands, in case there are no heirs capable of taking the estate of an intestate.

The committee disavow any intention of a departure from the settled policy of the law of this country upon the subject in hand; on the contrary they insist that their "recommendation is in harmony with the spirit of our institutions, and in the same direction as the present laws against perpetuities, entailments and of descent."

That they are not agrarian or communistic in their sympathies is shown by the liberality of their limitation. Those estates which fall short of the limitation would not be affected. Half a million dollars ought to be a reasonably satisfactory fortune for a young man or young woman to begin with and the other poor kinsmen would find life not unreasonably burdensome to whose store a hundred thousand dollars should be added by way of windfall. It is not unlikely that the most serious apprehension which will be excited by the proposed reform will be, that if the legislature once enters upon the policy of limiting the amount one may take by descent or will, that it will run to extremes. In our estimation however this fear is substantially groundless. The conservative force of property itself will be amply sufficient to meet this danger. The greater danger is that the influence of property interest is so great as to render any reform in the direction suggested out of the question, except through the means of revolution.

The report does not enter into an extended argument in support of the recommendation, but one of the points made is, that while the laws as they now stand were sufficient, in the days of slow accumulations, to counteract the tendency to mass the wealth of the country in few hands, that times have changed, and they no more have that effect. The report adds:

"There never was a time in the history of the world when the power of money in skillful hands was so great as the present; or when the use of that power was made so conspicuous. The new forces at its command are augmenting it with wonderful rapidity. Already the scepter has passed from the sword to the counting-house. The fact that one individual may monopolize hundreds of millions of the wealth of the nation and pass it at last by will to another with all its possibilities, is a growing source of uneasiness among all classes of society.

It can not be denied that in the proportion that the very rich are increased, so is the number of the very poor also increased, and the number of those comfortably off decreased."

After some discussion by members of the bar association present at the meeting, the subject was referred back to Messes. H. B. Hurd, and James A. Connolly, members of the committee making the recommendation with request that they report at the annual meeting of the association to be held at Springfield, next January, giving more fully their reasons in support of the measure, and if they think proper presenting a draft of a bill in accordance with the recommendation.

We shall look with interest for this report and the treatment it will receive at the hands of the members of the association. Lawyers are proverbially conservative, and it is not a little encouraging that so advanced a measure has been brought forward by them.

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THE CHICAGO LAW INSTITUTE, was organized under a charter granted by the General Assembly of the State of Illinois on February 14, 1857; amended by acts of February 14, 1863, and February 23, 1867. At the time of the fire, this was the only organization of lawyers which had been in existence since 1858. It was chartered and organized mainly for the purpose of collecting a law library, which object was steadily pursued from the first, so that October 8, 1871, it had acquired seven thousand volumes of law books, valued at about $30,000. The library was the property of the shareholders, and freely used by them, and also by all judges and lawyers living outside of Cook County. It had always been kept in rooms in the Court-house, furnished by the County of Cook, and was in charge of a librarian and assistant. It was insured for $20,000 at the time of the fire, and had $1,318 in the hands of the treasurer. All the books, records, vouchers and papers of the Law Institute were destroyed, thus losing nearly everything but its name and legal organization.

At the annual meeting, on November 6, 1871, the members voted to collect an assessment of $25 on each share of stock, and to sell new shares on the original terms, in order to collect a fund for the establishment of another library. The City provided two rooms for the use of the institute and library, receiving generous and valuable donations of money and books. The first gift was a draft for $500 sent by Hon. Joel Parker. A committee was appointed to conduct the correspondence in regard to the up-building of the library. This committee consisted of the following gentleman: Hon. Thomas Hoyne, Hon. M. W. Fuller and Hon. H. N. Hibbard. We quote from their report;—

"The Committee have succeeded in the effort they were appointed to make, greatly beyond their own expectations, and greatly beyond all expectation, however sanguine. At the time of their appointment, they had the advantage of an able and concise report, prepared by the Committee on Finance. That report was prepared immediately after the fire, by D. L. Shorey, B. F. Ayer, O. H. Horton, Sam. W. Fuller and John V. Le Moyne. It was a comprehensive showing, but in brief detail, stating the full extent of our losses, and the then condition of the institution, financial and otherwise. The Bar were informed also of the progress that had been already made towards restoration, and of the new progress of our affairs. It also contained a summary of all facts necessary to convey abroad, and to strangers, the extent of the calamity which had involved with all others classes, the Bench, the Bar, and the administration of justice. No such calamity had ever before fallen upon an entire city and people. The destruction of twenty thousand houses was only the grosser side of the disaster. To it was to be added the absolute and entire destruction of the public records of every kind, decrees and judgments of courts, municipal and county rolls, and records of the evidences of title to lands. But when to all this there is added the loss of the public and private libraries of the whole legal profession, and the destruction of all the law offices with their contents, so that on the day after the fire the laws themselves seemed to have been suspended, we recall a condition of things before which every former parallel fails in comparison, and remember a calamity beyond adequate description by human faculty, and of so overwhelming a nature that no previous human experience had suffered it.

"From the effects of this disaster the legal profession was among the first to rally. The proverbial spirit of our Western people never manifested its pluck and energy more rapidly. In less than six weeks after the fire the members of the Institute, burnt out in all their offices, and in many instances in their homes, had levied upon themselves a contribution to refound the Institute and restore the library, amounting to the sum of $3,000.

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The Bar of Chicago had already been offered unsolicited aid in many sympathising quarters outside the city. When your Committee was appointed, many valuable donations had been received by the Institute. The Hon. John M. Wilson, of this city, one of the original corporators of the Institute, had issued in its behalf a prompt and earnest appeal, and all its members were at work amidst the ruins and ashes of the fallen city, to raise again the walls of one of its most useful public institutions. It has again been raised. The Law Institution of Chicago is again established, with full one-third of the material which it contained before its destruction, it now offers to the profession about two thousand volumes of most valuable contributions, constituting the nucleus of one of the best law libraries of the United States.

In the report of November 20, 1871, the Institute acknowledges its obligations of that date toward all to whom it had become indebted on account of donations then made. We had become bound to the city of Chicago, through the enlightened appreciation of its Common Council and Board of Public Works, for rooms to be occupied in the new City Hall, in which the Institute is now located.

To demonstrate that the Institute had proven itself worthy of the trust it had undertaken with respect to the profession, your Committee enclosed with each letter addressed by them, printed slips of the report of the Finance Committee, prepared for that purpose. They divided their labor in the several States by ascertaining their personal relations to each. They then assigned to each his field, where he could be most influential. The distribution of labor was made as follows:

Mr. M. W. Fuller undertook the correspondence with the Governors of the States of Rhode Island, Connecticut, Maryland, Massachusetts, Georgia, Tennessee, New Jersey, Missouri, Nebraska, Pennsylvania and Oregon.

Mr. H. N. Hibbard undertook the correspondence with Vermont, Alabama, New Hamsphire, Louisiana and Minnesota.

Mr. Hoyne undertook the correspondence with the States of New York, Virginia, Ohio, Kentucky, Arkansas, California, Delaware and West Virginia.

The States of Iowa, Indiana, Kansas, Maine, Michigan and Wisconsin had already responded to calls made upon them by members on behalf of the Institute, by sending nearly full sets of Reports and Statutes.

The first response to your Committee, cordial and cheering, came from the Governor of New York, John T. Hoffman. The tone of the letter, as well as the promptness of the action, showed in him the spirit of a great magistrate, fitly bestowing the gifts of empire. The letter is worthy of transcription. He says: "I received yesterday morning your letter of the 1st (December, '71) inst., relative to supplying in part the great loss sustained by the Law Institute and the legal profession of Chicago, by the fire of October 8 and 9, 1871. I have made arrangements this morning with Banks & Bros., law booksellers, to forward to the Institute, without delay, a complete set of the Session Laws and Revised Statutes of the State, together with the State Reports from the beginning, the Digests, and the last edition of Kent's Commentaries. They will be forward in a few days by express, charges paid. I have preferred not to wait for authority from the Legislature, deeming a prompt response to your request important. I have no doubt my action will be approved, and I beg the Law Institute will accept the books as a gift from the State of New York."

Within a few days after the receipt of this letter, the munificent gift, containing about five hundred volumes, sent by Governor Hoffman, arrived, "charges paid." This collection, besides all the Reports of the States, contained the Session Laws of New York from 1800 to 1871, the Revised Statutes,

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Digests, Kent's Commentaries, with many public documents and legislative journals and reports.

Next came the great little patriotic neighbor of New York—Connecticut—who through her noble and generous-hearted Governor, Marshall Jewell, and the State Librarian, Charles J. Hoadley, sent us forty-nine volumes of her Reports, Statutes, Session Laws and public documents, including her Colonial History, in two volumes.

The great State of Ohio, through Governor Hayes, and under a joint resolution of the two Houses of the General Assembly, passed January, 26, 1872, sent us Reports of her Supreme Court, Digests, Statutes, and legislative and official reports, in all about fifty-four volumes.

The State of Arkansas, depleted and yet suffering from the effects of the recent civil war, sent us, through Governor Hadley, Supreme Court Reports, Statutes, and legislative documents and reports, in number about thirty volumes.

The State of Georgia, another Southern State, through her Governor, Benjamin Conley, responded December 20, 1871, sending us about forty volumes of her Reports, Statutes, and public documents.

South Carolina, on the 24th of January, 1872, sent us Reports, Statutes and State papers, amounting to about thirty-six volumes. We have a promise of the entire set of her valuable Debates, Judicial publications, tracts and historical documents, as soon as her improved condition will admit of any progress in that direction.

From Tennessee we have received, through Governor Brown, about twenty-four volumes of Reports, Session Laws and legislative journals.

From the State of New Hampshire we received a large invoice of books, the gift of members of the Bar of that State. There are in all about seventy-two volumes, including New Hampshire Revised Statutes, the Session Laws from her earliest history, and a copy of Worcester's quarto dictionary, presented by Judge Samuel T. Worcester, brother of the author. This collection was sent by Hon. Henry A. Bellows, of Concord, a distinguished member of our own profession, and a Judge in his own State.

The State of Rhode Island has sent us, through Governor Padelford, her Colonial Records in ten volumes, Supreme Court Reports, Statutes and Session Laws, in all twenty-three volumes.

From Governor Gilbert C. Walker, of Virginia, the Committee have a strong letter, in which we are informed that a resolution was agreed upon immediately on the receipt of our letter, in a Committee of the General Assembly, to purchase and to send to the Institute full and entire sets of Reports and Statutes, including all the historical documents in which that State is so rich and interesting. The origin of our own State, her early institutions and laws, as well as that of the four other Northwestern States, make all the archives of Virginia a necessary part of the history of Illinois—the common property of both States, and as such, Governor Walker, a former son of Illinois, regards the obligations of the mother of States to her own offspring.

We have also been in correspondence with the distinguished Minister of the United States to the French Republic. He began his career as a practitioner at Galena, as a member of the Bar in this State. He expresses himself most warmly in our behalf, and tenders to the Institute his own law library, which will be delivered over as soon as he can visit the United States during the next summer. In the meantime through his active agency, and that of Mons. Henry Harrisse, of Paris, formerly a resident of Chicago, there has been sent to the Institute, as a contribution from the French Minister of Public In-

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struction, a valuable collection of French publications. These packages were received a few days ago with a catalogue, through the State Department of the United States at Washington. The works are none the less acceptable because of a general literary instead of a special legal character. They are a few of the rarest kind of biographical, geological, historical and scientific works. Our thanks are due the French Government.

We have received from Col. E. S. Joslyn, of Elgin, Illinois, an offering of money amounting to $85,25, being the proceeds of a lecture delivered by him, under the auspices of the Elgin Bar, in behalf of the Institute; and from Edward S. Alderson, Esq., of London, a distinguished member of the English Bar, a personal contribution of two guineas.

It will be difficult to enumerate, and still more to appropriately express our sentiments of gratitude and emotion to all the sources of generosity and beneficence—States, magistrates and individuals—to whom the Institute is indebted all over the world.

Your Committee desire that, so far as it is possible, this should be at once undertaken. Your Committee recommend that, while all the correspondence is fresh and attainable, some person or persons should be appointed to arrange and collect it for preservation. The correspondence in reply to the Committee is some of it of the most interesting character. It should all be transcribed in a well-bound book to be kept for this purpose among the archives of the Institute.

It is a more formal, but not the less a grateful duty for the Board to pass an appropriate resolution of thanks, compliments, or acknowledgments for all donations, and to see that the same be properly brought to the attention of the donors. This will be the discharge not only of a duty, but will surely afford the members of the Chicago Bar the most profound satisfaction.

Your Committee having no other business before them, except it may be to acknowledge any further letters received, respectfully ask to be discharged.

THOMAS HOYNE,
M. W. FULLER,
H. N. HIBBARD,
} Committee.

Resolution of the thanks of the Institute were proffered to the Governors of States, the State Legislatures and Officers, the members of the Legal Profession, and persons and organizations, who so generously and promptly contributed to restore the Law Library of the Institute.

With such generous aid and sympathy bestowed from year to year and with the enthusiatic support of the Bench and Bar of Chicago, the Institute has continued to grow and prosper until it has become, as its friends predicted, one of the most useful and necessary institution of our new and energetic city.

The regular annual meeting of the stockholders of the Chicago Law Institute was held at their rooms in the Court-house January 9, 1886. The President James K. Edsall called the meeting to order and submitted his report. We extract from said report;—

"At a meeting of the committee, held September 26, 1885, an additional rule was adopted in relation to the use of the Law Library, whereby any shareholder, who, for the reasons specified in the rule, does not desire himself to make use of the library, by virtue of his share of stock, can designate in writing some member of the bar who may, with the consent of the librarian and treasurer, and upon payment of all assessments levied on such share of stock, have the use of the library, by virtue of such share in place of the owner thereof."

The report of the librarian showed that 1,074 volumes had been added during

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1885 and that the use of the library had largely increased over any previous year.

The Treasurer's report showed insurance on library fifty thousand dollars, balance in treasury January 9, 1886, $1,286.30.

The Secretary's report showed the number of member 567. After the approval of these several reports the following officers were elected for 1886.

J. N. STILES, President.
F. Q. BALL, 1st Vice President.
S. S. GREGORY, 2nd Vice President.
W. H. HOLDEN, Treasurer.
W. I. CULVER, Librarian.
F. W. PACKARD, Secretary.

MANAGERS:

J. K. EDSALL,	E. HANECY,
O. H. HORTON,	J. H. HAMLINE,
JULIUS ROSENTHAL,	W. H. THOMPSON,
CHAS. A. DUPEE,	W. C. LARNED,

JAMES FRAKE.

THE UNION COLLEGE OF LAW has opened the fall session with more than the usual number of students in attendance.

Those who have had the good fortune to have listened to the instructions in this most excellent Law College can appreciate the labor performed by the gentlemen who carry on so successfully a large and flourishing institution by their own individual exertions.

While many colleges fail, though largely endowed, this one has made itself a great power without assistance so far, from any quarter.

If the judges and lawyers of the city of Chicago, who are interested in the advancement of legal learning should ask the City Fathers for suitable accommodations for the College of Law, we have no doubt they would accede to their request.

They have liberally provided for the Public Library and the Law Institute, and it is now in order to fit up a room in the Court-house for the Law School.

This being done the friends of the college and notably the ALUMNI would no doubt interest themselves in raising an endowment fund which should place the UNION COLLEGE OF LAW on a firm and lasting foundation.

A most important decision has just been rendered by Justice Potter which is of interest to all musical persons, and is a telling blow at trades unions. The Musical Union objected to the performance of any of their members in company with an imported oboe player engaged by Theodore Thomas, and enforced their objection by fines and threatened expulsion. It was in vain that Mr. Thomas urged the fact that there was no oboe player in the union capable of playing the music required of him. The union insisted upon enforcing their rules. The oboe player in question was perfectly willing to join the union, but was prevented from doing so by a by-law of the organization which made it necessary for him to be six months in the country before he could obtain admission to the order. In this emergency Mr. Thomas applied for and obtained an injunction restraining the union from interfering with its members or punishing them for playing in company with performers who were not union men. Justice Potter has given his decision in favor of Mr. Thomas, holding that the by-laws of the defendant forbidding members to play with non-union men are in restraint of trade and against public policy and void. He also issues a perpetual injunction forbidding these laws from being put into operation against the plaintiff.

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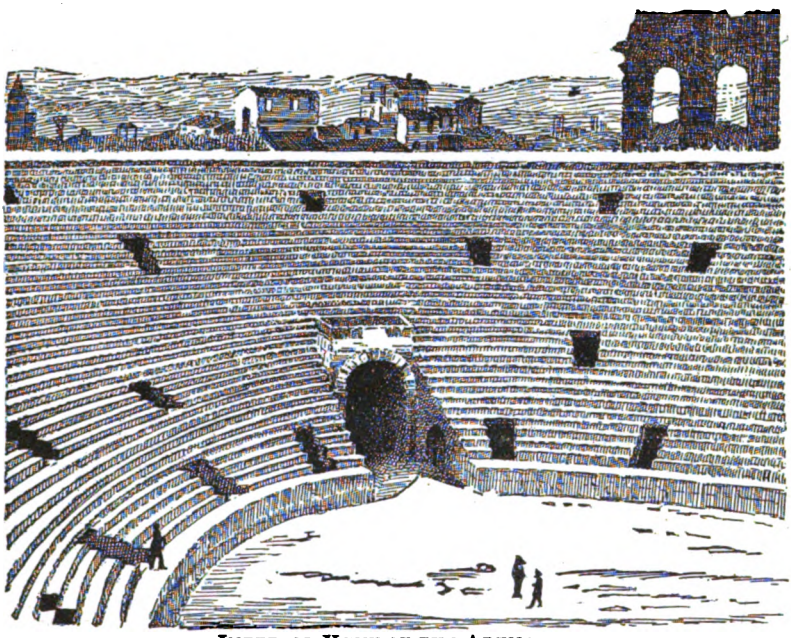
NOTES OF FOREIGN TRAVEL. THE ARENA AT VERONA.



INTERIOR VIEW OF THE ARENA.

A friend writes;

In five minutes I was in presence of the most remarkable and interesting sight that I have seen in my travels, without exception.

It is the "Arena" or amphitheater, constructed under the reign of Diocletian, Emperor of Rome; for this you must know was an important Roman City. It is an immense structure of stone or marble. It is called marble, but appears like a sort of granite. The main walls are of this material, but many of the partition walls inside, which are very thick and massive are of smaller stones laid in cement. More than three-quarters of the whole stone and and marble work is in a good state of preservation. It is in circular form, and is about 1,500 feet in circumference. It is somewhat difficult to describe, being entirely different from any building I ever saw. But perhaps you will get a better view of it if we commence inside with the amphitheater. And if we commence there you must take the above photograph which shows the inside, and have it before you as you read.

The two figures which you see at the bottom are myself and my guide, so I will explain to you what he is explaining to me, and what I see for myself.

The open space at the bottom is the arena in which the gladiatorial contests, and the combats with wild beasts took place. It is surrounded by a perpendicular wall five or six feet high which originally was surmounted also by a balustrade for proctection against the enraged beasts. The semi-circular rows which you see are the seats, which are of marble. They were about eighteen inches high, one above the other, and the seats average in depth, that is from back to back, at least two feet and a half; some of them being three feet but

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others not more than two. There were originally fifty-two of these, of which forty-five are preserved. While the seven are all gone, the forty-five are all there, but some few of them have been replaced.

The opening which you see near the center of the picture is the place where the animals were brought into the arena, and leads to various rooms, surrounded by massive walls, in which the animals were kept; rooms or dens, which are still in a good state of preservation.

The marble balustrade which you see over this opening, and which is still well preserved, is the place where the Emperor sat with his family, and there is another on the opposite side, though you do not see it, which was occupied by the Senators.

The fragment of wall which you see at the top of the picture on the right, is a fragment of the Facade in front of the building, which rises to the height of about one hundred and ten feet, the other wall averaging on the outside about seventy-five feet. This fragmentary wall consists simply of blocks of marble, lying one upon another, and it would not take as much of a shock of earthquake as they had at Charleston to throw them off. Of course it is dangerous; but the people here do not like to admit it.

We will now go through that opening that I spoke of, and winding our way among the massive walls, get on the outside. And now you must take the other photograph. For some reason the fragmentary wall does not in this view appear to be shown. But you see the two stories of arcades which constitute the outer wall, which is very well represented.

But now there is another part of the building to be described, which is not photographed. That is the space between this outward circular wall, and the arena. That entire space is filled with rooms, dens, halls, stairways, passages, etc., a wonderful labyrinth, every thing being bounded, divided and arched by walls of the most massive description. You can form some idea of the mass of stone and marble and cement in these spaces, when you take the dimensions of the arena, and reflect that all the balance is occupied in that way. I do not know the exact diameter of the open space or arena proper, it is about one hundred and thirty by something over two hundred feet but you will see by the first photograph how small it is compared with the distance across at the top. Now that whole space represented by the difference is taken up as I have stated.

I do not now have in mind any building of modern times that requires such an amount of marble stone and mason work, as did this structure.

There it stands, a grand structure. 1,600 feet in circumference, the walls still standing to the height of eighty feet, within thirty feet or so of the complete height of the building, and there are the marble seats inside—forty-five tiers clear round,—all but seven of the upper tiers, which are gone. And there is a portion of the Facade standing, to the height of one hundred and seventeen feet, looking toward the bridge across the Adige, which the Emperor had to cross in coming to the amphitheater—for he had his summer residence in Verona at the foot of the Alps and near the Appennines. The rapidly flowing Adige passes through it. Of course it is healthy in Verona, and there was his palace on yonder height across the river. Do you doubt whether he attended? There you can see still the marble balustrade and balcony at one end near the lower seats which was occupied by himself and family, and at the other end was and is another for Senators. That of the Emperor is directly over the opening through which the wild beasts came into the arena. Sitting there he could better see how they were received by the gladiators.

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EXTERIOR VIEW OF THE ARENA.

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In the presence of this building you are in the presence of the past. It carries you at once back over decades of centuries. You can see the Roman people all around, gathering together from the city and from the country and villages around about, to witness an expected entertainment. The emperor has built this structure for their gratification, and they need not fear being excluded. Twenty-five thousand can be seated, and seventy thousand more can have standing room, for the seats are two and an half to three feet deep from back to back. And they need not be afraid of falling with those massive walls of granite underneath, all through only small rooms, dens for wild beasts, halls, stairways, etc. All the rest solid walls. As well might they if on the top of a mountain fear falling down through the rock underneath. You can see the people assembling—thousands have already entered the building, and other thousands are lining the way to the bridge over which the Emperor must cross. There is a murmur and commotion—the Emperor is coming—he is on the bridge—he has crossed, and now he appears, in his splendid chariot, drawn by six horses gaily caparisoned. The people throw up their hands and shout as he passes.

And now there is a grand rush for the building. But the centurions are there, and they must wait until the Emperor and his family and the Senators have been seated. Then they pour in by thousands and ten of thousands—and soon nearly a hundred thousand people of all ages and both sexes are gazing down into the arena. And now the door is thrown open; the beasts enter, and the combats commence. One luckless combatant is over-powered, and falls, weltering in his blood. He hears the clamors of the excited multitude, but scarcely any sound of pity soothes his passage to another world. Another combatant is victorious, and greeted by enthusiastic and tumultuous plaudits.

To all this and more, which took place one thousand and six hundred years ago, do these walls and these marble seats testify—living witnesses. And so the past comes back again—the intervening centuries have disappeared.

To me there is nothing more suggestive of the past them the tolling of the church bells, which is occurring so much of the time in all the principal European cities.

It seems to me that the bells of to-days are tolling in response to those of yesterday; and those again to those of the day before; and those again to those of the week and month before; and so on back, back, through the years, the decades and the centuries, to the time when the churches were built. And then the refrain was echoed back by other bells in churches now no more, back, back, through the centuries.

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BOOK REVIEWS.

LAW MADE EASY: Lelia J. Robinson, LL.B. Sanitary Publishing Company, Chicago. (Sold only by subscription.)

Books have been published for business men, but nothing has ever been put out adapted to the wants of the great mass of people—containing information on all legal questions that come up in life—not restricted to business matters alone. The experience of many years in daily journalism has been brought to bear in selecting the topics which would be of greatest use, and in so handling them as to make a really popular book, free from technicalities, everything simplified and explained and put in commonest English, so that it may be easily read and comprehended. Every device of the printer's art has also been utilized to make the text clear to the eye, and subjects easy to find.

The great aim of the work has been to give such information as may enable people to KEEP OUT of legal difficulties. Nine-tenths at least of the people whose names appear v. some other name in courts of law or equity the country over, get there through IGNORANCE of some little point, simple enough in itself and perfectly easy to be understood, if they had only had any means of knowing it. But though the law itself holds every man, and every woman, BOUND to know the law at the risk of suffering from its penalties, in case of ignorance, there has never been any means by which people COULD know the law, unless by taking a course of legal studies, or else going to an attorney's office with every point that arose, and paying therefor. The author say:

"The idea of writing such a book grew up out of the questions that were asked me by clients during my first years of practice, questions so simple, often, that it seemed to me absurd that they should have to ask them, yet second thought reminded me that a very few years before I had been as ignorant as they, and even more so. And how were they to learn these simple matters unless by studying, as I had done? There ought to be some book of practical information which they could read, but I knew of nothing more rudimental or practical than Blackstone. One must be written then, and I went to work. "Law Made Easy" is purely preventive law, if such a term may be used, it is in no sense the "Every Man his Own Lawyer" kind of work, which by teaching people to draw their own papers and attend to their own legal matters, got them into more difficulties and made double business for the lawyers in the end. I only advise gaining such general knowledge as may keep one clear of the multitude of pitfalls. If by a false step he stumble in, or if a false friend pushes him in, then he will not, if he is wise, try to climb out alone, but will send for the best lawyer he knows of."

This is one of THE BOOKS OF THE TIME. Written with such clearness, accuracy and care, that the most uninformed in regard to legal matters, may clearly comprehend almost every question that is likely to arise in the ordinary transaction of business. THE CHAPTER ON EXECUTORS AND ADMINISTRATORS AND THE SETTLEMENT OF ESTATES, is worth the price of the book to any married woman. Women as a class are uninformed in regard to business matters that involve any legal intricacy, and especially is the settlement of estates a matter that involves them in endless trouble and expense. We trust the work may find extensive circulation.

A Checkered Life: by Col. John A. Joyce: pp. 324, S. P. Rounds, Jr. $1.00.

The author was a soldier for the Union in a Kentucky regiment in which he rose from the ranks to the command of the regiment, many incidents of which are graphically detailed.

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JOHN MARSHALL, LL.D.

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THE CHICAGO LAW TIMES.

VOL. I.] APRIL, 1887. [No. 2.

JOHN MARSHALL.

John Marshall, of Virginia, Chief Justice of the United States, was born on the 24th day of September, in the year 1755, at Germantown, a small village in the then frontier county of Fauquier, in the colony of Virginia now known as Midland. His father, Colonel Thomas Marshall, was a Virginia planter and took an active part in the war of the Revolution.

The Marshall family were of British descent, having emigrated from Wales to the colonies. They were distinguished for their intellect and force of character. When Washington received the command of the American armies, his friend and associate, Colonel Thomas Marshall, left his estate and his large family and embarked in the same cause. He commanded the 3d Virginia Regiment and served with distinction during the darkest and most eventful period of the war.

John Marshall early imbibed the military spirit. He was just entering his eighteenth year when the war between Great Britain and the colonies began. The thrilling words of Patrick Henry,—"*We must fight! An appeal to arms and to the God of Hosts is all that is left us!*" roused the patriotism in his noble nature, and laying aside his classics and his law he enrolled in a military company and turned his attention wholly to perfecting himself in the art of war.

Young Marshall was elected lieutenant of his company, and rose rapidly in favor and in rank. No officer of his grade stood higher. He was frequently called upon to act as Deputy Judge Advocate, in which position he acquired deserved reputation and influence.

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When the army went into winter-quarters in 1779, Marshall and other officers were sent home to take charge of the militia. In this interval of time he applied himself with renewed ardor to the study of the law, under the direction of Chancellor Wythe, professor of law in the College of William and Mary, and Mr. Madison, president of the college. In 1780, he obtained a license to practice law. Mr. Marshall's first appearance in political life was in the Virginia Legislature, of which he was elected a member in 1782. He was chosen a member of the State executive council, which position he resigned in 1784, in order to devote himself more closely to his professional duties. January 3, 1783, he married Miss Mary Willis Ambler. About this time Mr. Marshall located himself permanently in Richmond, which city afforded a better and wider field for the display of his transcendent legal abilities.

He was plain and even careless in his personal appearance, but as a speaker he had no superiors. A writer, speaking of these times thus describes Mr. Marshall as a speaker:—

"So great a mind, perhaps, like large bodies in the physical world, is with difficulty set in motion. That this is the case with Mr. Marshall is manifest from his mode of entering on an argument, both in conversation and in public debate. It is difficult to rouse his faculties. He begins with reluctance, hesitation and vacancy of eye. Presently his articulation becomes less broken, his eye more fixed, until finally his voice is full, clear and rapid, his manner bold, and his whole face lighted up with mingled fires of genius and passion, and he pours forth the unbroken stream of eloquence in a current, deep, majestic, smooth and strong. He reminds one of some great bird, which flounders on the earth for a while before it acquires impetus to sustain its soaring flight."

In 1788 Mr. Marshall was elected to the Virginia convention held for the purpose of considering the adoption or rejection of the federal constitution. He took a decided stand in favor of the constitution and did more than any other man except Mr. Madison, to secure its adoption. Mr. Marshall made three speeches in the convention which assembled June 2, 1788.

The third was in regard to that celebrated constitutional question, which was discussed in Chief-Justice Jay's time, in the case of Chisholm vs. The State of Georgia, namely, whether a State was liable to answer in the federal courts at the suit of a citizen of another State. Mr. Marshall

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differed widely from Jay, Justice Blair and others of his associates in the convention. In the course of this great speech in support of State sovereignty he said:—

"With respect to disputes between a State and the citizens of another State, its jurisdiction has been decried with usual vehemence. I hope that no gentleman will think that a State will be called at the bar of the federal court. Is there no such case at present? Are there not many cases in which the legislature of Virginia is a party, and yet the State is not sued? It is not rational to suppose that the sovereign power shall be dragged before a court. The intent is to enable States to recover claims of individuals residing in other States. I contend this construction is warranted by the words. But say they, there will be a partiality in it, if a State cannot be defendant—if an individual cannot proceed to obtain judgment against a State, though he may be sued by a State. It is necessary to be so, and cannot be avoided. I see a difficulty in making a State defendant which does not prevent its being plaintiff. If this be only what cannot be avoided, why object to the system on that account? If an individual has a just claim against any particular State, is it to be presumed that on application to its legislature he will not obtain satisfaction? But how could a State recover any claim from a citizen of another State without the establishment of these tribunals?"

Mr. Marshall's law practice was very extensive and lucrative. In the Virginia reports from 1794 to 1797, his name is found as counsel, on one side or the other, of the great majority of cases. He occupied a front rank amid an array of legal talent rarely seen in any country or any time. The bar of Virginia could then boast of such men as Campbell, Lee, Ronald, Wickham and Warden, Baker, Randolph and Washington—a bar possessing every element of forensic greatness, learning, eloquence, intellect, culture—all that can adorn and dignify the professional mind. Above them all, Marshall towered, an intellectual giant.

In 1795 he was again elected to the legislature, though contrary to his wishes. The great question of the day was the adoption of 'Jay's Treaty' with Great Britain. In Virginia, a bitter opposition assailed the treaty, and the entire State rang with denunciations of it. Even the influence of Washington was powerless to stay the tide of popular passion excited against the treaty and those who upheld it. Meetings were held in Richmond, and the treaty was fiercely denounced. Marshall now came to the rescue, and before a meeting of the

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citizens of that place made such an unanswerable argument in favor of the treaty, that the men who had been foremost in assailing it now united in the adoption of resolutions indorsing the policy of the administration. In the legislature his efforts were equally successful, and the opponents of the administration were forced to abandon their constitutional objections to the treaty, and to content themselves with a simple denial of the expediency of the measure at that time. President Washington attached so much importance to these services that he offered to his old friend and comrade the position of Attorney-General of the United States, but Marshall declined the offer, as he wished to devote himself to his practice, which had now become very large. He continued to sit in the legislature, which did not interfere with his business, and remained the constant and vigilant friend of Washington's administration. In 1796, he was offered the post of Minister to France, as Mr. Monroe's successor, but he declined it for the same reason which had made him refuse the attorney-generalship. In 1797, when the offer was repeated, this time by President Adams, Marshall yielded to the entreaties of Washington, and went to France with Pinckney and Gerry, as envoy extraordinary. The object of the mission was to remove the obstructions placed by France in the way of American commerce. The envoys were unsuccessful, but a correspondence took place between Marshall and Talleyrand, which was a source of great satisfaction to American publicists, and raised Marshall still higher in their esteem and confidence. Upon his return home in 1798, he was given a public reception in New York by the citizens, and a public dinner by the two houses of congress, "as an evidence of affection for his person, and of their grateful approbation of the patriotic firmness with which he had sustained the dignity of his country during his important mission." He subsequently took a prominent part in support of the measures of retaliation directed against France by the administration, which were sharply assailed by the opposition. He resumed his practice in Richmond, but was again drawn from it by a message from Washington, who requested him to visit him at Mt. Vernon. He did so, and

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the result was that he yielded to the solicitations of his old chieftain, and consented to accept a seat in congress. He was elected to the lower house of that body in 1799. During the canvass President Adams offered him a seat in the Supreme Court of the United States, but he declined it.

His career in congress was brief, but brilliant. The federalist party was hard pressed by the republicans, and he promptly arrayed himself on the side of the former, as the champion of the administration of John Adams. The excitement over the "Alien and Sedition Laws" was intense, but he boldly and triumphantly defended the course of the administration. Mr. Binney says of him that, in the debates on the great constitutional questions, "he was confessedly the first man in the house. When he discussed them, he exhausted them; nothing more remained to be said; and the impression of his argument effaced that of every one else."

His great triumph was his speech in the Jonathan Robbins affair. Robbins had committed a murder on board an English ship-of-war, and had sought refuge from punishment in the United States. In accordance with one of the provisions of Jay's Treaty, his surrender had been demanded by the British minister, on the ground that he was a British subject, and he had been surrendered by President Adams. The opposition in congress made this act a pretext for a famous assault upon the administration, and a resolution was introduced into the house of representatives by Mr. Livingston, censuring the president for his course in the matter. This resolution produced an extended debate in the house, in the course of which Marshall defended the president in a speech of great force and eloquence. Judge Story has said of this speech, that "it was *reponse sans replique*—an answer so irresistible that it admitted of no reply. It silenced opposition, and settled then and forever the points of national law upon which the controversy hinged."

In May, 1800, Mr. Adams offered Marshall a seat in his cabinet as secretary of war, but before he could enter upon the duties of that office he was made secretary of state, in which capacity he acted for a short while, conducting several

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important negotiations during that time, and leaving behind him several of the most magnificent State papers to be found in our archives. During his occupancy of this position, it became necessary to appoint a Chief Justice of the United States, and Marshall took advantage of the occasion to urge upon the president the propriety of tendering the place to a distinguished gentleman who had been a faithful friend to the administration; but Mr. Adams quietly informed him that he had made up his mind to confer the honor upon the man best suited to it, and that he had sent to the Senate the name of John Marshall of Virginia. This appointment, which came to him entirely unsolicited, was made on the 31st of January, 1801, and was unanimously confirmed by the senate.

Chief-Justice Marshall took his seat on the bench of the supreme court at the February term, 1801. His associates were William Cushing, of Massachusetts, the only remaining member of the court originally appointed by Washington; William Paterson, of New Jersey, a lawyer of learning and ability, and a statesman of large experience; Samuel Chase, of Maryland, undoubtedly the most vigorous and original intellect next to that of Marshall on the bench; Bushrod Washington, of Virginia, trained in the same school with the chief-justice, and bringing with him from the bar of his native State a reputation as well earned as it was afterwards nobly sustained; and Alfred Moore, of North Carolina.

Such was the Supreme Court of the United States at the time Marshall began to preside in it in the winter of 1801. Its sessions were then, for the first, held at the new city of Washington, to which the seat of government had been removed the previous summer. Most of the old members of the bar who figured prominently as advocates at the organization of the court were still in active practice. The younger race of lawyers, who in a few years later composed that brilliant galaxy which centered around the bar of the supreme court, such as Pinkney, Wirt, Jones, Hopkinson, Emmett, Webster and Clay, had not yet entered upon this splendid forum of intellectual effort. Their senior brethren—the veterans of the bar—the men who thronged the precincts of the court in Jay's

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and Rutledge's time—Tilghman, Dexter, Lewis, Rawle, Dallas, Martin, Duponceau, Ingersoll—few of whom had yet begun to lag "superfluous on the stage," were the counsel mostly engaged in the earlier causes argued before Chief-Justice Marshall.

The Chief-Justice, when appointed, had reached the age of forty-five. Judge Story thus describes him:—

"Marshall is of a tall, slender figure, not graceful or imposing, but erect and steady. His hair is black, his eyes small and twinkling, his forehead rather low, but his features are in general harmonious. His manners are plain, yet dignified, and an unaffected modesty diffuses itself through all his actions. His dress is very simple, yet neat. His language chaste, but hardly elegant. It does not flow rapidly, but it seldom wants precision. In conversation he is quite familiar, but is occasionally embarrassed by a hesitancy and drawling. His thoughts are always clear and ingenious, sometimes striking, and not often inclusive.

"He possesses great subtlety of mind, but it is only occasionally exhibited. I love his laugh, it is too hearty for an intriguer; and his good-temper and unwearied patience are equally agreeable on the bench and in the study. * * * *

"He examines the intricacies of a subject with calm and persevering circumspection and unravels its mysteries with irresistible acuteness."

"There is no man in the court that strikes me like Marshall," wrote Daniel Webster. "I have never seen a man of whose intellect I had a higher opinion." Again, in alluding to the common expression of the Chief-Justice, "It is admitted," Webster remarked to Judge Story, "When Judge Marshall says, 'It is admitted,' sir, I am prepared for a bomb to burst over my head and demolish all my points."

It is worthy of remark that perhaps no court has ever had the advantage of a more distinguished and able bar to practice in it than was the bar of the supreme court at the time when Marshall presided there. Of the thirteen original States, Massachusett contributed the great names of Dexter and Webster; New York sent Hoffman, Wells, Ogden, Emmett and Oakly; Pennsylvania supplied Tilghman, Rawle, Ingersoll, Duponceau, Hopkinson, Sergeant, and Binney; Maryland asserted a high place in the persons of William Pinkney and Robert Goodloe Harper; and Virginia was well represented by Wickham, Tazewell, Leigh, Edmund Randolph, Robert B. Taylor, Patton, the brilliant Wirt, and Walter Jones. The

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decisions of the Chief-Justice may be said to bear the impress as well of the minds of these great lawyers as of his own.

In surveying the results of the labors of thirty-four years recorded in thirty-two volumes of reports, it is obvious that it was in the decision of cases involving international and constitutional law that the force and clearness of the Chief-Justice's intellect shone most conspicuous.

The high sense of judicial duty and the absolute incorruptibility of his character are well shown in the trial of Aaron Burr, for treason. Col. Burr, guarded by a military escort, appeared with his counsel, Edmund Randolph and John Wickham, on the morning of the 31st of March, 1807, before the Chief-Justice, who had already been seated half an hour on the bench. The accused apologized in his blandest manner for the delay, declaring that he had "misapprehended the hour at which he was bound to appear," and the argument, on the motion of Mr. Hay, District-Attorney of Virginia, and Mr. Rodney, Attorney-General of the United States, to commit the accused to answer for a high misdemeanor, and on a charge of treason, immediately commenced. Burr himself, calm, collected, confident in language and manner, addressed the court after his counsel had taken their seats, in opposition to the motion, in one of those plausible and insinuating arguments whose keen and subtle logic was so peculiarly his own. "According to the constitution," he remarked, "treason consisted in *acts;* that an arrest could only be justified by the suspicion of *acts*, whereas, in this case, his Honor was invited to issue a warrant upon mere conjecture; that alarms existed without cause; that Mr. Wilkinson alarmed the president, and the president alarmed the people of Ohio. He appealed to historical facts," etc.*

The next day the Chief-Justice pronounced his opinion, and after a careful review of the subject, decided to hold Col. Burr to answer the charge of a misdemeanor only, without including the charge of high treason. The offence being bail-

* 1 Burr's Trial, p. 7.

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able, the accused was recognized in the sum of ten thousand dollars.

The grand jury, consisting of some of the most eminent citizens of Virginia, were impanelled and sworn on the day of the opening of the court, May 22d, and on the 24th they brought in indictments against Aaron Burr and Herman Blennerhasset, for both treason and misdemeanor.

A short extract from the opinion of Chief-Justice Marshall will serve to show for what Burr was arraigned and the ground of the decision:—

"The overt act of treason laid in the indictment was the levying of war in Blennerhassett's Island;—Burr was not present, either in person or in contemplation of law, either actively, or constructively aiding and assisting in the particular act there alleged to have been committed; and whether that act amounted to an act of war or not (which the Chief-Justice intimates he would have submitted to the jury), no proof of any other overt act could lawfully be given in evidence under the indictment."

The effect of the decision was, of course, to cut off the government counsel from giving any evidence to connect Col. Burr with the transactions on Blennerhassett's Island. The prosecution was at an end. The next day, the jury having retired under the charge of the court, brought in a verdict of not guilty, and a similar fate met the indictment for misdemeanor.

Says Wirt in a letter to a friend: "Marshall has stepped in between Burr and death. He has pronounced an opinion that our evidence is all irrelevant. Burr not having been *present* at the island with the assemblage, and the act itself not amounting to a levying of war."

"Why did you not tell Judge Marshall that the people of America demanded a conviction?" was the question put to Wirt, after the trial. "Tell *him* that!" was the reply, "I would as soon have gone to Herschel, and told him that the people of America insisted that the moon had horns as a reason why he should draw her with them."

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The case of Dartmouth College,* which involved the important question whether a grant of corporate powers by Congress is a contract, whose obligation the States are inhibited from impairing, attracted great attention at the time, by reason of some peculiar circumstances surrounding it, and to this day remains one of the most interesting and important causes which have ever arisen in the supreme court. The facts were these: A charter was granted to Dartmouth College in 1769 by the Crown, on the representation that property would be given to the college, if chartered; and after the charter was granted property was actually given. In 1816 the legislature of New Hampshire passed three acts amending the charter, which amendments the trustees would not accept. They resorted to the aid of the State courts, where judgment was given against them; then they appealed their case to the supreme court. Mr. Hopkinson and Mr. Webster appeared for the college, and the other side was represented by Mr. Wirt, then Attorney General of the United States, and Mr. Holmes. Great interest was manifested in the speeches of Webster and Wirt. Mr. Webster had argued the case in the courts below. He was familiar with the whole field of controversy. He was a graduate of the college, and his feelings as a man no less than this ambition as an advocate urged him to the utmost exertion of his intellect. His speech before the court consumed more than four hours, and was marked by his usual characteristics,—great clearness of statement and much force and precision in his reasoning. His argument was considered one of the greatest of his forensic life. His noble peroration is familiar. Towards the close of it, overcome by emotion, the speaker proceeded with difficulty. Pausing to recover his composure, and fixing his eye on the Chief-Justice, he said in that deep tone which so often thrilled the heart of an audience: "Sir, I know not how others may feel," glancing at the opposing counsel before him, "but for myself, when I see my Alma Mater surrounded, like Cæsar in the senate house, by those who are reiterating stab upon stab, I would

* Wheaton, vol. iv., p. 518.

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not for this right hand have her turn to me say, *Et tu quoque, mi fili.*" With this he sat down, leaving his whole audience profoundly moved.

The argument of Mr. Wirt, in support of the acts of the legislature amendatory of the college charter, was described as full, able, and eloquent.

The opinion of the court was delivered by Marshall, Chief-Justice.

"This is plainly a contract to which the donors, the trustees, and the crown, to whose rights and obligations New Hampshire succeeds, were the original parties. It is a contract made on a valuable consideration. It is a contract for the security and disposition of property. It is a contract on the faith of which real and personal estate have been conveyed to the corporation. It is then a contract within the letter of the constitution, and within its spirit also. Unless the fact that the property is invested by the donors in trustees, for the promotion of religion and education, for the benefit of persons who are perpetually changing, although the objects remain the same, shall create a particular exception, taking this case out of the prohibition contained in the constitution. On what safe and intelligible ground can this exception stand? There is no expression in the constitution, no sentiment delivered by its contemporaneous expounders, which would justify us in making it. In the absence of all authority of this kind, is there, in the nature and reason of the case itself, that which would sustain a construction of the constitution not warranted by its words? Are contracts of this description of a character to excite so little interest that we must exclude them from the provisions of the constitution as being unworthy of the attention of those who framed the instrument, or does public policy so imperiously demand their remaining exposed to legislative alteration as to compel us, or rather permit us, to say that these words, which were introduced to give stability to contracts and which, in their plain import, comprehend this contract, must yet be so construed as to exclude it?"

In so short a sketch it is impossible to more than glance at some of the most important cases decided by this eminent jurist, or to give any adequate idea of the extent, the variety, the comprehensiveness of his labors; but the value of such services will ever be felt in the various branches of commercial and maritime, as well as international law, the law of copyrights, the law of patents, and in all those subjects which are within the cognizance of the federal tribunals.

A brief reference to the personal traits and leading characteristics of Judge Marshall cannot fail to heighten the es-

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teem and veneration already felt for this great and good man.

In dress and bearing it would be difficult to imagine any one more plain and simple than Judge Marshall. He was fond of social enjoyments and was the center of a brilliant circle. He was devotedly attached to his wife, whose death was a heavy blow to him. Judge Story, who saw much of him about this time, afterward said: "She must have been a very extraordinary woman, so to have attached him; and I think he is the most extraordinary man I ever saw, for the depth and tenderness of his feelings."

He was so full of genuine benevolence and good-will that his hand, heart, and purse were ever ready for a kindness, and he was an active member of numerous societies whose mission it was to do good. He belonged for nearly half a century to the Amicable Society at Richmond, which was formed to relieve strangers and wayfarers in distress, for whom the law made no provision. He was a member of the Masonic Order. He belonged to the Colonization Society, and took an active interest in its objects. He was a prominent officer of the Virginia Bible Society, and was a friend to the Sunday-schools. Once he walked at the head of these schools through the streets of Richmond, in token of his earnest sympathy in their cause. Although a Unitarian in belief, he was a pew-owner in the Monumental Episcopal church, and a regular attendant on its services.

The Chief-Justice was a great admirer of the ladies, whose society he greatly enjoyed. He always warmly defended their equality in native intellect with the sterner sex. He was remarkable also for his fondness for children and young men. He took an active interest in their sports and exercises, and was always a favorite with them.

The fame and popularity of the Chief-Justice naturally attracted to him the attention of foreign visitors to this country. Among others, Miss Martineau met him at Washington in the winter preceding his death. She said of him:—

"With Judge Story sometimes came the man to whom he looked up with feelings little short of adoration—the aged Chief-Justice Marshall. There was almost too much mutual respect in our first meeting; we knew some-

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thing of his individual merits and services, and he maintained through life and carried to his grave a reverence for woman, as rare in its kind as in its degree. Throughout life he so invariably sustained their cause that no indulgent libertine dared to flatter and humor, no skeptic, secure in the possession of power, dared to scoff at the claims of woman in the presence of Marshall, who, made clear-sighted by his purity, knew the sex far better than either."

Endowed with every moral as well as intellectual attribute which can adorn the highest judicial character, with a firm temper and lofty courage, a solid and compact intellect, a rugged manhood, he stands before us, great as a judge, yet greater as a man.

The death of Chief-Justice Marshall, which occurred in Philadelphia, on the 6th day of July, 1835, in his eightieth year, created a profound sensation throughout the country. Although more than half a century has elasped since his death, he is still held in grateful memory by the American people. The unveiling of Story's statue of the great Chief-Justice at the National Capital is the most recent manifestation of the lasting esteem and profound respect of his countrymen.*

* We are greatly indebted in making up this sketch to "Lives of the Chief-Justices," by George VanSantvord, Magruder's "Life of John Marshall," and sketch in "Great Fortunes," by James D.McCabe.

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A BILL FOR REST OF TITLES

A committee of the Union League Club, consisting of Messrs. A. M. Pence, John P. Wilson, Harvey B. Hurd, W. D. Kerfoot, George C. Walker, and John L. Thompson, all of whom are recognized as good real estate lawyers, or as having large experience in real estate transfers, has made a report embodying a bill, the title of which is, "A Bill for Rest of Titles."

No more important measure to the interests of Cook county will be presented to the present General Assembly for its consideration, as it involves the title to every homestead, every piece of property in the county, and the people and the General Assembly cannot too carefully consider the proposed measure. In the main it is good. The great fire destroyed all the records of title, and all that was left was: 1. Such deeds as private individuals had. 2. Such copies of records as could be found in the archives at Washington and Springfield. 3. Possession. 4. Such *memoranda* of title as appeared by abstracts; but this latter is not official, and can be made so only by legislation, and as to this the law attempted to make legal what the abstract men had. 5. Tax titles, which were disregarded.

I appreciate the difficulty, for at the time of the fire there was nothing but baskets full of old abstracts, *memoranda*, etc. Since the fire, lawyers have taken what is presented, but they are careful in giving opinions to say what the opinion is founded upon, and no lawyer can give to-day an opinion of title founded upon what he regards a certain rule of evidence.

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That something ought to be done every lawyer will agree. The bill of the Union League is that any one claiming title may appear before a master in chancery, make his claim, and if it is not questioned in three years it shall stand.

Of course it is competent for the Legislature to fix rules of evidence, to fix limitations, but is it not better that a court should in advance have something to say about it? Is it not a dangerous precedent to take *ex parte* statements? Won't it open a wide door? Would not the better way be about as follows:

1. Let the claimant make and prove his statement before a master in chancery, showing his title the best he can.

2. That after the master shall have done all he can the claimant shall give notice to "whom it may concern," as in cases of condemnation, that at a certain term of court he will apply for an order of confirmance. At the stated time, if no one appears, he takes his order, and his claim is entered of record. If any one appears let it be contested, but if no one appears let the order be entered of record, and after three years it shall be deemed settled; but if any one comes in let him fight it out. I am opposed to *ex parte* proceedings to settle titles. The English of it is that any one claiming title shall summon the world; if after three years no one comes let his title stand.

Since the great Chicago fire, several firms have engaged in the business of making abstracts, and the Recorder also, but these firms have had no special facilities for examining titles prior to the fire. The proposed bill establishes no particular rules of evidence, nor would it make any particular difference, for the proceeding is in no sense judicial. It proposes to establish evidence and perpetuate it without the sanction of a court. A proceeding under the statute to perpetuate testimony does not make that testimony absolute: it can be used only in some judicial proceeding. A law which will authorize the perpetuation of testimony in cases of title cannot be objectionable, but that evidence would not constitute a title. A court must first pass upon it. It seems to me a bill might be framed so that the owner of land and in possession may file

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a petition in court, and publish a notice as in case of unknown owners in condemnation proceedings, and then if no one appears, the order of the court, as in cases of default, may be recorded, and from the recording the same he may have the benefit of a short statute of limitations. But is it quite safe to record an *ex parte* statement?

James P. Root.

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A PRESCRIPTION FOR POVERTY.

This is an age of specifics. They are applied with an unsparing hand to suffering humanity in every phase of its being. Not confined to the body alone, they reach out towards curing the diseases of the mind and the innumerable social and industrial ills which the complications of society have engendered. Probably more ingenuity is exercised, at the present day, in trying to furnish a specific for the industrial evils than for those of any other class, not because these evils have not cried aloud for reform ever since Cataline hatched his conspiracy to suppress them, but because the sons and daughters of toil, gaining in intelligence every day, and seeing themselves outstripped "in the fierce race for wealth" by people not a whit better than they, have come to conclude they have not a fair chance in the race.

But whatever the nature of the nostrum in modern therapeutics proposed for the workingman, the best of all, if he did but know it, is good, old-fashioned, honest industry. This has been seen to work well in almost every instance where it has been honestly and persistently tried; and while, I believe, no other remedy can be found to supersede this, I make bold to offer one, not as a panacea, but as a sort of help meet for the manly virtues of well-applied industry. If the methods of the past are to be taken as the only preventives of poverty, we may well conclude the evil is incurable, and the case of the poor man is indeed a hopeless one.

Let us look at one or two of these, the most promising and prominent in the list of prescriptions. And first of all, our

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public charities. Far from wishing to underrate or undervalue them, I give them the full benefit of all they have achieved, and even of all their founders have designed to achieve by them. And yet it is obvious, they are incapable, in the nature of things, of reaching more than an infinitesimal portion of the suffering classes. The great bulk of these classes are beyond their reach or relief. All who are able to toil for a daily subsistence, however urgent their needs, must appeal in vain to such charities, because they are intended for those only whose mental or physical infirmities are such as to preclude the possibility of their earning a livelihood by their own industry. Beyond the category of proper subjects for relief by eleemosynary institutions, therefore must be placed almost the whole body of the poorer classes, such as artisans in our workshops, operatives in our mills and manufactories, and every one else who is compelled and qualified to earn a living by manual labor.

Next, let us examine for a moment, what has always been considered a wholesale remedy for the evils of poverty not only by many philanthropists and publicists, but by a large number of the sufferers themselves. I mean a forced and more equal distribution of property among all classes of citizens. In ancient times such a remedy was sought through the instrumentality of laws having this object directly in view. But how far short these laws fell of accomplishing it, the most superficial knowledge of history will acquaint us. The resulting advantages were more than outweighed by the resulting calamities.

In more recent things, while a few persons are found advocating the passage of agrarian and sumptuary laws, most of those who base similar reforms upon similar means, look for them through the intervention of "labor strikes," "trades-unions," commercial conventions and other organized efforts, having for their end concessions and forced contributions from the wealthier to the poorer classes. It is needless to say that in the public advocacy of these measures on the rostrum and in the party organs, much foolish condemnation of the more prosperous portion of the community and much crude com-

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ment on the relations of labor and capital are indulged in; while the extreme end had in view seems as far off as ever, and, as we shall see further along, is impossible of attainment in the way proposed. Even if it were possible of attainment, such is the structure of human society, or, we might better say, such is the condition of poor human nature itself, that the forced equilibrium of wealth if once effected, could be maintained only for the briefest interval. For, by the law of individual and industrial activity, this wealth would flow back into its accustomed channels whence it had been but momentarily diverted.

Nothing can be plainer than that any compulsory division of wealth or even an approximation to it through the machinery of labor strikes and similar devices, even if it could be brought about, is a delusion and a snare, and at best would serve only as a temporary make-shift, having no lasting effect, and seriously jeopardizing the interests of all concerned. The point to be gained being an increase of the wages of labor, this increase, if it come at all, must come from the profits of the employer. While there are doubtless some industries that would admit of such a levy to a limited extent, and for a limited time, without destroying or seriously embarrassing them, yet in the majority of cases, the profits being accumulated little by little and day by day or week by week, any material daily or weekly drain on them, such as is contemplated by labor strikes, would involve such a sacrifice on the part of the employer that his business would eventually be ruined by it. It would have precisely the same effect, in the long run, as if the whole capital embarked in the business were suddenly divided up between the laborers on the one hand and the employer on the other; and of course bankruptcy would be inevitable. Such a violent subjection of capital to the will or caprice of labor, involving, as it does involve, humiliation on the one side, and ill-will and animosities on both sides, cuts like a two-edged sword, stopping the wheels of industry, and throwing all engaged in it out of employment.

The great fundamental objection to all such methods of reform is that they do not strike at the root of the evil, or

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rather they attack it at the wrong point, and hence their gain, if there is any, is only provisional and temporary.

Now the one thing needful to elevate the condition of the laboring man, and rescue him from abject want or something worse, is that while his wages shall be sufficient to purchase the necessaries of life, he shall not be obliged to expend them all for these, but shall have surplus enough to procure him some of the comforts and luxuries as well, and in addition to this to accumulate a capital, little by little, which with proper industry and economy shall place him in a comparatively independent position.

But this independence he cannot achieve, as we have seen, through any of the avenues hitherto opened to him. He must therefore try some other; and if it can be found that the same end which is sought in vain by means of an increase of wages can be secured by another method which, if not so direct, is nevertheless more efficacious and more compensatory to the laboring classes, a method that will not disturb the existing relations between labor and capital, and which, when acquiesced in, will allay the heaving billows of strife and discontent that so often agitate the surface of society, whenever questions of this nature come up for settlement—if, I say, such a substitute can be found, it would seem as if we were approaching a solution of the gravest social problem of the day.

Such a solution, I contend, may be found, and almost all the evils of poverty may be warded off, by reducing to their first cost all those commodities that enter into the necessary daily subsistence of mankind, in other words, by a reduction to first cost of the necessaries of life.

If such a result can be brought about, it is obvious that the effect will be similar to that of an enhancement of the wages of labor. For it matters not to the workingman whether the advantage he realizes comes directly from obtaining more money for his labor, or from paying out less money for what he is obliged to buy to support himself and his family. Thus, if his weekly necessary expenses amount to fifteen dollars, and he cannot provide for himself and family for less, he will just as surely gain five dollars per week by being able to

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reduce his expenses to ten dollars, as he would if he were to exact from his employer the additional sum of five dollars in wages. In the one case he gains by saving what in the other case, he would gain by accretion or accumulation. And, further, if it can be shown that these gains would be far greater under the system I advocate than would be possible under the most successful strike for higher wages, there is no good reason why it should not be adopted, provided it be compatible with justice, order, and more important than all, with that higher destiny and condition of the human family, which are foreshadowed by the march of improvement, and by those laws, scarcely perceptible in their operation until after long periods, which dominate and regulate social progress.

That all the necessaries of life ought to come to the consumer freighted with no more profit, cost or expense than such as is absolutely necessary to their production, seems, at first blush, like a visionary proposition, and one incapable of practical application. But viewed in the light of reason and common sense, it will be found, I think, that no such character necessarily attaches to it, and that this reproach upon it is due more to habit and prejudice than to any well grounded apprehension.

What I call the necessaries of life are the air we breathe, wholesome food and water, and sufficient fuel and clothing to keep us warm. All of these are essentially natural rights, just as much, and in the same sense, as life itself, because without them life itself is unendurable and impossible. That such is the character of the first in the list, namely, the air we breathe, no one will deny; and to preserve it its purity, and to guard against any infringement or monopoly of the right of using it, statutes have been framed in all civilized communities. The same remarks will apply in a more limited sense, to the water we drink. People are prohibited, under severe penalties, from contaminating it, or turning it from its natural channels, or putting any restrictions on its free use and enjoyment; and when, as in large towns and cities a sufficient healthful supply cannot be obtained without expense, that expense is reduced to first cost to all consumers.

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A more pregnant and pertinent example than this of the practical application and utility of the doctrine here advocated cannot well be imagined. Here is one of the necessaries of life, not more important or conducive to our well-being than the rest, but furnished to us more prodigally and with less labor than any of the rest, with the exception of the atmosphere, hedged round with restrictive legislation, but by the general consent of mankind made absolutely free, so far as possible, to the whole community. Wherever the individual consumer is incapable of procuring it, the municipal authorities or other corporate bodies furnish it; at first by the rudest and simplest contrivances, then through the agency of reservoirs and acqueducts, so that no single family or inhabitant shall be deprived of it, and always at a cost not to exceed the expense of bringing it within their reach. Hence, nothing is cheaper than the water supply of cities, and no one ever thinks of complaining of it as an unnecessary burden. But suppose it came to us saddled with the same charges as our flour, or bacon, or fuel, how prompt would be the instinct to murmur and rebel against it. First would come the charges, dictated by some arbitrary standard of value, of whomsoever should happen to be the owner of the supply, next those of the purchaser from the owner, who might be called the wholesale dealer, next those of the speculator in the article, and lastly the profits of the retail dealer, who dispenses it to his customers—thus passing from the original source of supply through a multitude of hands, and burdened with an accumulation of profits and expenses that would double and treble the cost to the consumer, as compared with its present mode of distribution and delivery. And yet so far as our natural right to them is concerned, our food and our fuel stand on precisely the same foundation as the water we drink.

The only difference between the *rationale* of our water supply and of our food supply is that nature, being more lavish of the one than of the other, has furnished it ready-made to our hands, so to speak, while the other has to be submitted to certain industrial processes in its production, before it can be

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accommodated to our use. But this difference being accidental only as to their origin or production, ought not to make any difference with respect to their distribution and supply; and provided a proper equivalent is paid to those who produce our food, the difference in question entirely disappears, and thus the article of food and the article of beverage stand on the same footing, and no legal or other discrimination ought to be made in favor of either.

To illustrate the argument a little further: suppose nature supplied us the means for satisfying our hunger with the same prodigal hand, and with as little expense as she supplies the means for satisfying our thirst, or, in other words, suppose the prime cost of the one were no greater than the prime cost of the other, there would then be no good and valid reason why the distribution and supply of food and drink to each individual should not be conducted on the same principle of cheapness and economy. Let those who raise our food receive for it a remuneration sufficient to pay them a reasonable profit for their industry, and the two commodities become indentical in respect to every succeeding step in the progress of reaching the consumer; and thereafter every preference or protection shown to the one more than to the other, every hindrance or obstruction thrown in the way of the one more than the other, would be an unjust and odious discrimination, palpably inconsistent, and involving the most serious consequences to the well-being of the poorer classes.

What has been said touching our social claim to protection against hunger will apply equally well to that of protecting ourselves against cold. As sacred rights, which every one who comes into the world inherits with the very breath of life itself, they ought to come to us unshackled from every interference with their free use and enjoyment. Every limitation upon them is a hardship which every good government will make as light as possible, especially seeing that it falls with the heaviest hand upon those members of the community who are the least able to bear it, and who, at the same time, contribute the largest share of the public expenses. If the State undertakes to guard against the infliction of heavy burdens

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upon any one of our natural rights, there is no reason why it should withold protection from the rest. If light, air and water are permitted to enter our dwellings, free from exactions, why should not the same privilege be awarded to food and fuel, which are equally necessary to existence, and clothed with the same natural sanctions? The only answer to this is that in most civilized countries, nature has supplied a sufficiency or a superfluity of the one class of gifts, without the application of artificial means to make them available for use. But does this afford any sufficient pretext for inflicting a variety of burdens upon the other class, before they reach the consumer? On the contrary, ought they not to stand exempt from further taxation, provided a reasonable profit is first paid the producer? It seems to me that the simple statement of such a proposition as this is all the argument needed to sustain it.

The next question that arises for consideration is: In what way, or by what machinery shall the present cost of necessaries be reduced and regulated as between the producer and consumer? How shall the large army of middle men and "operators" who impose the bulk of the burdens on the consumer, be got rid of? Without assuming or insisting on legislation or State interference as the only or best remedy, or as a full solution of the difficulty, it is a curious coincidence, and one that may go far towards solving the question, that the hand of legislative reform has already been laid upon a kindred subject, and is at present stirring up society to its depths. Both in Europe and America, the position has been assumed that the different methods of public transportation may be coerced into such a reduction of rates both for travel aud traffic as is consistent with the general welfare of the people. The application of this principle with respect to rail-roads has become a familiar part of the history of the times: and a notable instance of its farther extension is to be observed in the great State of New York, while, by popular vote the whole system of tolls upon their canals has been abolished, and these great and important highways have been declared to be open to the free and unrestricted use of commerce, without any

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expense to the people other than what is required to keep them in a proper state of repair, and this expense to be maintained by general taxation.

Now canals and railroads and other public modes of transportation, while among the most important factors in modern civilization, are not essential to its spread and existence. More than this, they are not an essential ingredient in our happiness, and so far from having the characteristics of a "necessary" institution, they might be blotted out entirely, without destroying our happiness. Nevertheless, they are so interwoven with our present social needs and interests that their loss or absence would be a serious injury; and hence they may properly be classed, along with artificial light, domestic animals, and other objects of similar utility, in the catalogue of *quasi* necessaries.

It would be a curious subject of thought and one rich in material for reflection to the speculative philosopher to enquire how it happens that the remedy here prescribed for the pains of poverty among the working classes has been taken up by political reformers, and applied successfully to a grievance not to be compared in severity with those I have been considering, and one that, in the natural order of things, ought to be postponed to the others. For it requires little sagacity to see that it is of far greater consequence, in the beginning, to mankind at large to have the necessaries of life cheapened to them in their production, distribution and supply, than in the single article of their transportation, though all of these ends are important; and that it were better, all things considered, to commence the process of reform by cutting down or cutting off the exorbitant charges that are added to the first cost of production, since a much greater saving would accrue to the community at large and particularly to the poor man than is possible under any system of retrenchment in freight rates.

The reason why this anomaly and first step in legislation have taken the direction they have, is doubtless due, in great part, to the fact that the enormous fortunes made at the public expense, of late years, by the railroad companies, and others engaged in the business of transportation, being more

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conspicuous examples of individual selfishness and rapacity than the fortunes almost as large and more numerous acquired by speculators in the necessaries of life, have earlier directed the attention of the public to this subject. We have become accustomed, from long endurance of it, to the older and greater abuse, which has extended its ramifications into all the avenues of trade and commerce, while the later one has been lifted into sudden prominence by the dazzling prizes it has held out to the comparatively few who have seized upon them; just as in cases of insidious attacks and prostration by disease, while the most fatal symptoms have been overlooked, diagnosis has been directed to those only which appear on the surface.

If therefore no other *modus operandi* for meeting the difficulty before us was practicable or available, we have one ready made to hand in the means devised for checking exorbitant charges upon the public lines of transportation. Whether, as before observed, this is the wisest or the best method, being compulsory, it is probably the surest and most effectual. For no amount of persuasion or of appeals to the reason or the conscience of those engaged in trafficing in the necessaries of life is going to make them abate one jot or tittle of their demands. Then they can plead in their favor prescriptive right and the consent of the ages. The pound of flesh has been so long exacted, they have lost sight and thought of the blood. And if restrictive legislation is necessary to thwart the combinations and conspiracies of railroad companies, how much more necessary to thwart the mercenary designs of those who traffic in the very life-blood of the people; can it be said, with any show of reason, that the knife of reform is needed in the one case, and not in the other? What is the little fraction of expense saved by a reduction in railroad rates, compared with that immense average that would be saved to the poor man, provided the expenses of his daily living were cut down to prime cost? Is it not of far more consequence to him that the staples himself and family are obliged to use, in order to keep soul and body together, should be exempt from the heavy market rates they have to pay for them, by reason of their passing through so many different hands, than that a slight

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additional cost should be added to their transportation? And the classes engaged in this vital traffic—what better right have they to claim exemption from legal restraints and regulations than those who would, if they could, impose even a heavier tariff upon this transportation, or those who would, if they could, make merchandise out of the very air we breathe or the water we drink?

Upon principles of equity, everything that is necessary to preserve human life, being held by the same tenure of natural right, ought to receive the same legal sanction, and be subject to equal legislative control. Any favoritism shown by the laws or by common custom to one of these birthrights more than to another begets a prejudice in its behalf that is apt to blur our eyes to its real origin, nature and relations. Thus it has happened that while the aid of the civil authorities has been successfully evoked to protect us against the mercenary aims of those who would interfere with or limit us in our supply of water, by the imposition of heavy burdens upon the consumer, other gifts of nature just as priceless and necessary to our existence, have been suffered to go by default. as it were, and for so long a period that we have almost forgotten their true character and claims to consideration. Consequently the task is now much greater than ever before, and becoming still greater, every day, of snatching the control of our food and fuel supply out of the hands of the "ringsters" and speculators who manipulate the market to their private advantage, and of transferring it into the hands of the government. Fortunately there is no laches or statute of limitations that can be set up as a sufficient plea in favor of the continuance of a great wrong. Nor, because it is upheld by great numbers, whose apparent interest it is to perpetuate it, should it be allowed to go on forever. I say *apparent*, because I think it could be demonstrated, if it were necessary to my purpose, that, in point of fact, the parties engaged in the traffic, like all the rest of the community, would, all things considered, be benefitted by its suppression, since they could procure what is most essential to their subsistence at a much cheaper rate than at present, and be more than compensated for any losses they might suffer

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in their business by this rebate in the price of these necessaries.

I have stated that the reduction in the price of his food, fuel, clothing, etc., to first cost would be far more compensatory to the laboring man than any increase of wages he could expect to realize from labor strikes and similar expedients. And the statistics on the subject abundantly bear out the statement. Thus wheat can be profitably raised, in the great centres of supply in the West, for fifty cents per bushel. But by the time it passes through the hands of middle men to a market, it is more than doubled in price, and by the time it is converted into flour and sold as bread at the baker's, it is trebled in price. So of beef, while it is worth on the hoof only about an average of from three to five cents per pound, according to quality, when it reaches the retail markets it sells for three times that amount. With occasional fluctuations in the price, it sells in the London markets for twenty cents per pound, on the average, and in New York for fourteen cents. On the average coal and wood, while they do not exhibit so great a disparity as bread and meat between the cost of preparing them for use and the retail price, nevertheless, before they reach the consumers, they are loaded with exactions which make them average double what it costs to produce them. The same may be said of clothing. If made on principles of economy only approximating that which usually governs the manufacturers of this article in their dealings with their employes, and then delivered to the consumer without other charges, it would not cost more than half its present rates. Thus it will be seen that, in the whole list of necessaries, which is not long, while they are allowed to be dealt in the same as luxuries and other commodities, that is, while they are under the control and at the mercy of the various traffickers in them, not one passes out of the hands of the producer without being loaded down with a tariff of charges twice or three times as great as the consumer ought to pay.

Without enlarging further upon the different points that present themselves for discussion, enough has been said in this essay (and that is all the merit it claims) to indicate one of

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the directions that reform ought to take, to alleviate the condition of the poor. I will only add, in conclusion, my belief that this reform is but one step in the march of progress, one link in that great chain of causation which carries the favored nations—those the best fitted to live—forward to unforeseen epochs of discovery and triumph. That the foremost nations of the world have such an impulse in the right direction has, in these days, become almost an axiom in social science of such import that those who have the direction of affairs cannot afford to disregard it. Further than this, whether heeded or not, the impulse cannot forever be checked. Sooner or later it will assert its sway, and sweep away every barrier erected against it, and then wo be to those who stand in the way!

Men will not forever be deprived of their birthright. Those who are born to an inheritance of toil and privation will not forever suffer the pittance they earn to stand as an equivalent for the poor privilege of being able barely to rescue themselves and those most dear to them from the pangs of starvation. Those of them, who have been able to reflect upon their lot, have already discovered that human life has some higher aims and enjoyments and ambitions than such only as belong to a mere beast of burden. And this muffled discontent, this murmur of the masses will, in time, become something more than a bare complaint. It will pass from that stage of inaction—it will pass from the pitiless moan of suffering to the menace, and study and plottings of revenge; and it may be that those whose duty it is to listen and to provide a remedy, will only hear it, when it may be too late.

It may may urged, with a considerable show of reason, that the remedy herein advocated does not properly fall within the scope of governmental control; and if the views of many sociologists, among whom may be mentioned the honored name of Herbert Spencer—a name which, in my opinion, stands first among the great thinkers of the century—were to be taken as final on the subject, some different agency from that which belongs to the functions of a legislature would have to be devised, to carry out the reform in question. But in answer to this, I submit that all or nearly all that has been said or written

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against the protective and paternal spirit of legislation applies almost exclusively to governments founded on a different principle from ours—to governments where there is a ruling class as well a ruled, to be provided for, and where the mainspring of action is far from being the welfare of the people at large. Popular governments through individual representatives are, in theory at least, like a large corporation acting through its agents; and though in practice the principal is often misrepresented and the delegated authority abused, yet the ends of society, in any given age, are as well carried out by such governments as they can be, under the existing limitations of men's reason, conscience and condition; since, to quote the high authority I have just mentioned, "Out of no form of government can be expected a capacity and a rectitude greater than those of the society out of which it grows." Hence the power to inaugurate great and needed reforms in a republic—reforms looking to a wide departure from past expedients and experiments, may be safely intrusted to the hands of the legislature. If it cannot be lodged there, it would seem as if it cannot be lodged anywhere; it would seem as if the reforms, though ever so imperatively demanded by the people, and crying aloud for recognition and accomplishment, would be like the voice of one crying out in the wilderness.

Wm. Brackett.

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EUROPEAN POLITICS.

The European states still maintain large standing armies. Their contiguity to each other and their conflicting interests render a strong military force somewhat of a necessity. Still there is a growing sentiment in favor of peace, and a growing disposition to look upon the army as a guaranty for peace rather than as a weapon for war.

There is also a consensus among the principal nations in favor of maintaining the peace. Russia is outside of this. She is warlike and aggressive; ambitious, and intoxicated with power. France, by nature is within this peaceful circle. But at the present time she is coquetting with Russia, induced to do so by her jealousy of England and her hatred of Germany.

Russia, having aided to make Bulgaria a separate state, now claims rights there over other nations. A certain degree of preference would be conceded, but not to the extent claimed, which in fact does not stop short of a substantial control. If such a control should be conceded, the fate of Poland shows what would be the final result.

Much is said of the oppression of Ireland; but it is light indeed compared with that of Poland. Everything that would tend to keep alive a feeling of nationality has been taken away. Even the Polish language can only be taught through the medium of the Russian. Every officer, civil and military, is Russian. Even the postmaster and the justice of the peace is Russian. Business men may have their business signs in the Polish language, but there must be a duplicate sign under-

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neath in Russian. And the Bank of P land, the last remnant of national pride, and the last reminder of national independence, must be transformed into an agency for the Russian government.

But the spirit of liberty is alive in the hearts of the people and is fostered in many a secret association. Should Russi force Europe into a war and should an allied army find itself in Poland, thousands and tens of thousands of Poles would once more rise and strike for freedom. This fact, in connection with the want of financial resources, causes Russia to hesitate in front of the fearful combination she would have to encounter.

Turning to the Western European States, we find, west of Germany and Austria, a gradual process going on, tending to freer forms of government. In Italy, in Spain, in Belgium. France, notwithstanding the supposed wayward character of her people, has maintained her form of government with a steadiness and an enthusiasm which has surprised the surrounding nations, and her example is becoming contagious. Italy, since dispossessing the papacy of temporal power, and making Rome the capital, is making rapid advances, not only in population and in all the elements of material greatness, but in intelligence and in the establishment of free institutions. The monasteries are being shorn of their temporal power, and in some instances suppressed, schools are fostered and higher institutions of learning established. The idea of Garibaldi, of making United Italy under a monarchical form of government merely a stepping stone to an Italian Republic, has taken strong hold upon the hearts of the Italian people.

But it is in Spain that the republican movement is the strongest and the most general, and it is there that it may first be expected to develop itself in an organized form. Italy will follow. And at no distant day may be expected a union or confederation of the continental Latin peoples—the French, Spaniards, Swiss and Italians. No national bond is so strong as that of language, and the languages of these three peoples could easily be assimilated into one; and even without such assimilation, they find but little difficulty in inter-commun-

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ication. That fact, together with their geographical position renders such a union almost a moral certainty. Behold, a straw, showing which way the wind blows!

At a commemorative anniversary at Autun, held on the 2d of this month, one of the prominent brindisi (toasts) enthusiastically received was: "Viva la Repubblica! Viva l'Italia! Viva la Spagna! Vivano le Nazioni Latine! Vivano gli Stati Uniti d'Europa!"

Charles B. Waite.

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LIMITATION OF THE AMOUNT ONE MAY TAKE BY WILL OR DESCENT.

We called attention in our last issue to a recommendation made to the Illinois State Bar Association in 1886, and to the fact that an extended report was to be made to the coming meeting on the 11th of January, of this year. The report is an interesting document, and presents some views of the way of allaying the discontent of the people worth considering. We print the report in full. It is understood to be from the pen of the Hon. H. B. Hurd, Professor of Common Law Pleading, Evidence and Statute Law in the Union College of law, and one of the ablest lawyers at the Chicago Bar.

Report of Special Committee on the advisability of amending the statutes of descent and of wills so as to limit the amount any one person can inherit or take by will from the same decedent.

TO THE PRESIDENT AND MEMBERS OF THE ILLINOIS STATE BAR ASSOCIATION:

At the last annual meeting of this association we had the honor of recommending, on behalf of the committee on law reform, a change in the statutes of wills and descent of property, so as to limit the amount one might take by will or by descent from the same person. After some discussion the subject was re-committed to us for a more full presentation of reasons in favor of the recommendation.

We purposely refrained, in our report, from giving more than suggestions of a possible plan of limitation, preferring rather to consider the feasibility of the proposal apart from the details that belong to its final adoption. We did not ad-

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vocate any plan that would carry an estate away from the kin of the decedent, but one that would distribute it more widely among them—in other words, break it up into smaller portions than is done in the great estates at the present time, hoping in this way to counteract the growing tendency to mass the wealth of the country in few hands and keep it on in its course of augmentation through succeeding generations.

For the purpose of illustration, we said the amount a child should take might be limited to, say $500,000; and the amount one standing in the next degree of kinship might take, say $100,000; that those standing in the first degree of kinship should, if the estate is sufficient, be first paid to the full amount of the limitation applicable to that degree. If there were more than sufficient to pay these, the overflow should go to those standing in the next degree of kinship with a like limitation, and so on until the estate is exhausted. If there should happen to remain a surplus after satisfying all known heirs, the balance might go to the State as intestate estates now do when there are no heirs; a thing that seldom happens.

To make the statement more plain, let us suppose an estate to amount to $1,000,000, and the heirs to be as follows: In the first degree a child, and in the second, three brothers, and in the third, ten other persons. The estate would be divided thus: $500,000 to the child; $100,000 each to the three brothers, and the remaining $200,000 among the ten persons in the third degree of kinship, in equal shares, or $20,000 to each; so that, instead of making the one child ruinously rich, four persons would have handsome fortunes and ten would be given a good start in the world.

We did not propose any restriction upon devises for educational or charitable purposes. It is worthy of note, however, that Virginia, Maryland and New York, and perhaps other States, have enacted laws restricting the amount that may be given by will for charitable purposes.

Upon the question whether such a law would not be evaded by gifts *inter vivos*, and especially in anticipation of approaching death, we think it sufficient to say that the law could be so framed as to avoid all gifts that were in their nature testa-

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mentary or were made with intent to defraud the law. It is most likely the law would induce more liberal giving *inter vivos* both to assist dependents and for benevolent purposes.

The short discussion at the last meeting of this association, that followed our recommendation, brought out prominently two questions:

1st. Is the disposition of property upon the death of the owner within the control of the legislative power of the State?

2d. Would it be well to make the change proposed?

Upon the first question it will not be necessary to spend much time. There has never been a time in the history of the law in this country when the disposition of property by descent or by will was not regulated by statute. Each State is free to adopt such laws on the subject as it may think best. And no State, so far as we know, has seen fit to impose any constitutional restriction upon the exercise of this power. Mr. Reeves in his "Treatise on the Law of Descents" in the United States, says: "After the Revolution the several States composing the confederacy enacted laws regulating the transmission of real property by descent not only differing from, but utterly opposed to, the common law of England. The English law of descents had its foundation in principles of feudal policy, in no measure applicable to the existing state of things in this country, and calculated to cherish an aristocratic spirit hostile to our republican forms of government. When we became a nation we found ourselves divided into a number of distinct, separate sovereignties, each possessing the power to enact laws affecting the property within its own jurisdiction, with which the national government, binding all the States together with political bands, had not the remotest concern. Having rejected the English laws of descent, each State passed laws to regulate the descent of real property for itself; all of them differing greatly from this branch of the common law of England, and each differing from the other." He proceeds to point out some of the differences and says: "So a jurist, who is most perfectly acquainted with the law of descent in his own State, may be wholly incompetent to give

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an opinion that may be relied upon, respecting the law of descent in any other State."

Both in England and this country the power to dispose of property by will is the creature of the statute. Mr. Williams in his work on Real Property says: "The right of testamentary alienation of lands, is a matter depending upon act of parliament;" and Mr. Redfield says: "The right of testamentary disposition of property is unquestionably one of the results of cultivated social life and dependent upon municipal law?" When we look into the statutes of wills of the different States we find them almost as variant as the statutes of descent. In some of the States an infant can make a will, in others he cannot. In some a married woman has the same capacity to dispose of her property that her husband has of his, in others she is not capable of making a will of any but her "separate property," technically so called. These statutes are continually undergoing changes. In this State they have quite recently undergone very important changes. No will has any validity that is not executed, witnessed and proved in the way pointed out by statute, and unless the person making it is expressly included among those empowered to make a will. Even as to those who are empowered to make testamentary disposition of their property, their power is not unrestricted. A husband or wife cannot will away his or her property so as to deprive the other of a certain share of it which the statutes of descent give to the survivor. Thus, when the decedent leaves no child or descendants of a child, the surviving husband or wife will take one-half the real and personal estate in spite of the will of the deceased. There are many other restrictions which lawyers will readily call to mind. There is no constitutional restriction upon the right of the legislature to make and change these laws to suit the wishes of the people, nor is there any vested right standing in the way. Mr. Proffatt in his work on Wills, says: "It is claimed that the *jus disponendi* is a necessary incident of property, an inseparable quality, but if, by the term, we understand a right of disposal while a man lives, we can admit that it belongs to ownership; but it is quite a different thing

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when a man ceases to live, for then, naturally, he ceases to have dominion, and if he has a natural right to dispose of his goods for a short time after death, why not for a million of years? It is not a natural inherent right of the individual to dispose of his property after his disease; it is no more or less that a right given by positive law—a right which is founded on convenience and concession."

2d. Would it be well to make the change proposed?

That there is a most serious and a growing discontent among the people having its cause in the relations of property to our social and political welfare, no one will deny. The question upon which we must expect a wide difference of opinion is, just where does the fault lie, and how can it be remedied? We do not profess that we shall be able to answer either of these questions satisfactorily, but we think we shall be able to give some substantial reasons why the recommendations referred to would at least have a favorable tendency, extending with increasing efficiency far into the future.

To prevent the accumulation of large estates in particular families through inheritance and devises, has always been regarded as one of the distinguishing features in the policy of this country. If we look into the matter a little, we shall find that it lies at the very foundation of our system of government and exercises a most salutary influence upon our social and political welfare—scarely less powerful than the elective franchise itself; and without which a free ballot would be inconsistent with the permanence of a democratic government. De Tocqueville, speaking of this feature in our policy, says; "I am surprised that ancient and modern jurists have not attributed to these laws a greater influence on human affairs; for they exercise an incredible influence upon the social state of the people—a steady and uniform operation, affecting, as it were, generations yet unborn. Through their means man acquires a kind of preternatural power over the future lot of his fellow-creatures. When the legislator has once regulated the law of inheritance, he may rest from his labor. The machine once put in motion will go on for ages,

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and advance, as if self-regulated, toward a point indicated beforehand. When framed in a particular manner this law unites, draws together, and vests property and power in a few hands; it causes aristocracy, so to speak, to spring out of the ground. If formed on opposite principles (as in the United States), its action is still more rapid; it divides, distributes, and disperses both property and power. Whichever be the tendency, it goes on of its own force, grinding to powder every obstacle in its way." He contends in substance that the effect of our laws of inheritance (and he intends to include among these the laws against entailment, primogeniture and perpetuities) constantly tends to equality of condition among the people, and coupled with the equality at the polls gives a peculiar direction to public opinion, a peculiar tenor to the laws; imparts new maxims to the governing authorities and peculiar habits to the governed—modifies whatever it does not produce.

We do not wish to be understood as agreeing with the notion that it is either practicable or desirable to produce an equality as to property, much less a community of ownership or enjoyment; on the contrary, we indorse to the fullest extent what is said by Chancellor Kent in his Commentaries: "The sense of property is graciously bestowed on mankind for the purpose of rousing them from sloth and stimulating them to action; and so long as the right of acquisition is exercised in conformity to the social relations and the moral obligations which spring from them, it ought to be sacredly protected.

"The natural and active sense of property pervades the foundations of social improvement. It leads to the cultivation of the earth, the institution of government, the establishment of justice, the acquisition of the comforts of life, the growth of the useful arts, the spirit of commerce, the productions of taste, the erection of charities, and the display of the benevolent affections." * * * "A state of equality as to property is impossible to be maintained, for it is against the laws of our nature; and if it could be reduced to practice, it would place the human race in a state of tasteless enjoyment and stupid inactivity which would degrade the mind and

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destroy the happiness of social life. Where the law allows a free circulation to property by the abolition of perpetuities, entailments, the claims or primogeniture, and all inequalities of descent, the operation of the steady laws of nature, will, of themselves, preserve a proper equilibrium, and dissipate the mounds of property as fast as they accumulate."

The difficulty is that the laws as they now stand, fall short of accomplishing what they were designed to do, and what they once did sufficiently well. They are too slow to keep up with this style of invention, steam and lightning. They were well enough when it was of rare occurrence that a man accumulated a million dollars in a long business life; but now when the possibilities of amassing wealth are almost limitless; when one may, if he possesses the requisite skill and credit, control the markets of the civilized world; give personal and momentary direction to his widely separated agencies without moving from his desk, and amass millions in a single year, the conditions are altogether changed, and call for a corresponding change in the laws of property; such a change will keep us on in the way originally marked out as likely to produce the most happy results for all concerned.

The reasonable limits of this discussion will not permit of a mention of all the evils that may flow from the creation and maintenance of great estates in this country. The one consideration that is uppermost is the safety of property itself. The relations of property to our social and political welfare are so intimate, and the laws that control them are so far reaching, that they demand the most careful scrutiny and the earliest attention. The happiness of our people and the perpetuity of our government are bound up in this question. The great question is how may we put a stop to the growing animosity between labor and capital?

The committee did not in their recommendation favor such a change in the laws of inheritance as would affect the great majority of estates, but only those that are obnoxious to the spirit of our institutions, the "abnormally large fortunes," such as absorb and take out of circulation large blocks of wealth, giving to the possessors an undue prominence and in-

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fluence in the affairs of the country and constituting conspicuous marks of envy and suspicion. It can not be denied that the creation of these colossal fortunes is accomplished by a tendency to decrease the number of smaller ones and to greatly increase the number of those persons who have no property at all, or who have so little that they take sides with those who have none. The absorption by a few dealers of all the business in their line, means the killing out of the small dealers; the decrease in the number of the employer and independent class, and the increase of the employed and dependent class. How few men control the entire railroad system of this country, and what an immense power they possess and what facilities they have for increasing their wealth and power. They make the market in stocks to-day, and break it to-morrow; are every time the gainers, but over against these few gainers stand the great army of losers, not wiser, perhaps, but in a great deal fitter frame of mind to join the ranks of those that think things are some way out of joint. All this results in discontent, and the number of the discontented is steadily and rapidly increasing. We are not alone in our apprehensions. They are in the minds of all thinking men. No less a dignified and intelligent body than the House of Bishops of the Episcopal Church, in their late convention, at Chicago, thought the subject worthy of the most prominent place in their pastoral letter. They say: "Under the conditions of modern civilization, new dangers spring from the inequalities of the social state, the increase of poverty, discontent and pride being as marked as the accumulations of fortunes and the growth of luxury. How shall this discontent and misery be remedied; wealth recognize its stewardship; affluence own the brotherhood of man, and the less favored and successful be rendered cheerful and contented with their lot?"

That the church can do much by its teachings and its ministrations, there is no doubt, but it is for the State to correct the sources of this unhappy condition of things. The law is the expressed principle upon which the machinery of State works out the great results of organized society. As the principle is, so must the results be.

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It is not pretended that what we propose is a cure-all, but it is a movement in the right direction. It pertains to the fundamental principles of our government. It will turn the tendency to aristocracy and classes to that of democracy and equality of opportunities in the struggle of life.

The first thought is that this measure is antagonistic to property rights; on the contrary, it is to conserve them. Ours is a democracy in which majorities rule. Our policy has been and must continue to be to keep property in the majority, or, in other words, keep the majorities on the side of property. Let us contemplate for a moment the state of things that would come about, if those who are attributing all their miseries to the individual ownership of property, should suddenly find themselves in the majority at the polls. Their most sagacious leaders are already directing their attention to this point of attack, as far more likely of success, and infinitely safer to the agitator himself, than dynamite.

A leader among the non-property class speaking of this movement in Chicago says:

"We are already at work. Every labor organization in the city is now a political club. The first work to be done is to whip the small shop and store keepers into line. They are the small grocers and dry-goods stores, the butcher shops, fancy stores, saloons, shoe stores, and a hundred and one other small dealers. These parties were not with us last fall. The strength of their vote is in the neighborhood of 20,000. A raid is to be made on them. They make a living out of the working class, and if they are to continue to do it they will have to vote with the party that supports them. And I can tell you that these people will be shown that they cannot afford to say no. The great question in the political world now is *Capital* v. *Labor*. It is the only issue that can divide political parties. The issues that created the Democratic and Republican parties are dead. In less than ten years it will be the United Labor party and the United Capital party, and the questions will be fought out on that line. Then will come the social revolution, I suppose. The world will be turned upside down, capital will be put under where it ought to be—

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made subservient to man, and not man subservient to capital, as is now the case. Yes, sir, the world has got to face this issue, and as Chicago is the most radical place in the world its most advanced point will always be located here."

That there is a strong movement in this direction, no careful observer can have failed to see. To return and move in the opposite direction while property owners are largely in the majority may easily be done. It must be done by appealing to the self-interest of the people, and not by running counter to it. This is a land of abundance. We profess that it is one of opportunities and incentives. Let us keep good this profession. By so doing we shall keep the majorities on the side of property, and the poison of the socialist, nihilist and anarchist doctrines will not take effect. Their animosity to individual and exclusive ownership of property and to laws for its protection grows out of the fact that they do not happen to be the individuals who own it, and envy those who do. There is nothing in the doctrine of these men that has any root in the human affections. No man in his natural sympathies would be willing to put his earning in a common pot to be doled out to him from a common crib, or to be driven to his daily toil by a common overseer—the practical outcome of socialism. It is as much an affection of the human heart to desire the exclusive possession and enjoyment of property as it is to love one's own offspring, for whose well-being he would gather it around him. It is envy of those who have property that lies at the bottom of all socialistic and nihilistic talk and not an unwillingness to enjoy its comforts. It is the talk of those who have nothing but want something, and would turn every thing upside down to get it.

It reminds one of the case of the contention of the two women over the child. One was the mother of the child and the other wanted it. The mother wanted it because it was hers and her heart yearned for it. The other, because she had none and she coveted it; and so when Solomon proposed that it should be divided between them—which meant the destruction of its life and all pleasure it could be to either of them—and the mother in her anguish said, rather let her have it;

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she turned upon the mother and responded: "Let it be neither mine nor thine, but divide it." She was one of the earliest nihilists.

Contentment and safety lie in keeping good the promises of our free institutions, in giving to every man as nearly as may be an equal chance with every other man. The conviction is rapidly gaining ground among mechanics and laborers that the chances are not only not equal but that they are growing more and more unequal; that capital has its own way, and labor has a hard time of it, and he must be blind indeed who does not see that there is much truth in what they say. In the nature of things it must always be more or less so under the best practical conditions. The man who has gained a dollar is that much ahead of him who has his dollar to gain, and it is right it should be so. This gives incentive to higher skill and greater industry and frugality. It is in the nature of money to gain other money, to work for its owner, and when combined with skill in the direction of its energies, to increase in power as it increases in amount, and within reasonable limits this brings the best results for all concerned. An equal chance does not mean that all shall stop and divide and start anew, and keep stopping and dividing, as inequalities in acquisition arise, as they ever must. Nor does it mean that all shall receive equal pay for their labor. This would be to ignore all differences in skill and in natural ability and between him who has an established reputation and him who has a reputation to gain. Intelligent mechanics and laborers do not contend for this. What they ask and what they ought to be freely granted is that wages shall be in proportion to services; that the relation between one's pay and the cost of living be not so close that there is no chance of getting ahead of the necessities of life; that there is a way open for advancement from the more simple and least paid employments to the more responsible and better paid; that by self-improvement and economy he may press his way up into the higher walks of life; that the employed may in turn become the employer. We can not make good this bright promise to all; there will always be many that will not get ahead. Some from lack of

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natural ability of both body and mind; some on account of misfortune over which they have no control; others from unwillingness to meet the conditions of success; and still more —the victims of the vices. But we believe under a wise system of property law the number of the unsuccessful may be kept down to a small per cent. of the whole—far below the danger point.

The conjecture that a more general diffusion of property would seriously interfere with the carrying forward of great enterprises, has little in it. It is not difficult to concentrate capital wherever it will pay best. A far more difficult and important problem is how to prevent it from combining and crushing out all who are not admitted to the combination. If a more general diffusion of property would tend to a more general diffusion of enterprise, it would be a great point gained to the general welfare of the country—one of the strongest arguments that has been urged against perpetuities is that they take property out of circulation—get it into dead hands, as the lawyers term it. It is not the experience of this country that the great enterprises have been originated and carried forward by men who have inherited great fortunes, but by men who have grown up to the magnitude of their conceptions through toil and preparation.

Whether such a limitation would have the effect to damp the ardor of business to a hurtful extent would depend upon the reasonableness of the limitation itself. The settled law of a country has such an influence upon the customs, opinions and aspirations of the people that it is hard to tell beforehand what will be the ultimate effect of a great rule of property.

If, because one cannot leave to his children or other objects of his choice more than a certain amount, he will stop earlier in his career of money-making and take some good of it himself, it is not at all certain that the country will on the whole be the worse for it. His retirement will most likely open up opportunities for others, quite as worthy, and who will carry forward his enterprises with quite as good results as he might have done. But it is doubtful if the question of who will inherit the property has much influence upon the question of

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making it, unless it is forced upon the attention by the sudden removal of a cherished object. Some of the most eminent cases of great accumulations have been by men who had no kin upon whom they could bestow it. The habit of money-making, the pleasure of possession, the power and distinction which wealth gives, and the pride which it stimulates, have each and all proved sufficient to postpone the time of bringing a successful career to a close. The pride to build up great estates and found a great family (a pride that is more often disappointed than realized) would no doubt have to be relinquished in a great measure. Perhaps it would be replaced by endeavors more thoroughly to fit those who are coming on for greater usefulness and success. It will no doubt have the effect to widen the range of sympathies among kindred as primogeniture has the effect to narrow them. We very naturally interest ourselves in those whom the law recognizes as entitled to share in our gains when we shall have done with them, and they quite as naturally return the solicitude.

Harvey B. Hurd.
James A. Connolly.

January 11, 1887.

The next day after the reading of this report before the Bar Association a special committee was raised in the House of Representatives of the Illinois Legislature to bring in a bill upon the subject. The Hon. Wm. H. Collins, of Quincy, was chairman of the committee and he has reported a bill of which the following is a copy:

A BILL

For An Act to Restrict the Amount Any Person or Corporation May Take by Descent or Will From the Same Decedent.*

Section 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly. No person shall, by will or testament, devise or bequeath either in trust or otherwise, more in value or amount, to the same person, than as follows, to wit: To his or her surviving

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wife or husband, not more than the sum or value of five hundred thousand dollars, or if the estate of decedent is in whole or in part in land, not more than fifteen hundred acres of land; to a child of the testator, or of his or her wife or husband, or a legally adopted child, not more than the sum of five hundred thousand dollars, or if the estate of decedent is in whole or in part in land, not more than fifteen hundred acres of land; to the descendants of a child, in case of the death of the child, not more than by this section might be given to the child if she or he were living; to any other person or corporation, not more than the sum or value of one hundred thousand dollars; and any devise or bequest shall be valid to such amonnt or value, and no more. This section shall not apply to devises or bequests for educational or benevolent purposes.

§ 2. No person shall be capable of taking by descent or distribution either of the real or personal estate of any person who shall die after the taking effect of this act, more in value and amount than as follows, to wit; A surviving husband or wife or child, or a descendant of a child when he can take directly and not by representation, not to exceed five hundred thousand dollars, or if estate of decedent is in whole or in part in land, not more than fifteen hundred acres of land. The decendants of a child taking by representation may take the same that the person he or she represents might have taken if he or she were living. No person entitled to take by descent or distribution shall be capable of taking from the same decedent more than one hundred thousand dollars. When the estate is more than sufficient to give to the persons first entitled to take the full amount to which they are limited by this act, the balance, or so much thereof as may be sufficient to give to each of them the amount they may take under the limitations contained in this act, shall go to the kin of the deceased standing next in kinship after those first entitled to take under the laws of descent in their degree and their representatives. If there is more than sufficient to give each of those standing in that degree of kinship and entitled to take the amount he or she may take under this act, the balance, or so much thereof as may be sufficient to give to each of those the amount he or she may take under the limitations of this act, shall go to those standing in the next succeeding degree of kinship to the deceased and their representatives. The like rule shall be applied to any surplus, so long as there shall be any, until the whole estate is divided among the kindred of the deceased, preferring those standing nearest to the deceased, to the extent he or she may take under the limitations of this act. When there is not sufficient to give to each of the persons standing in a certain degree of kinship, and entitled to share the full amount he or she might take, such part of the estate

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shall be divided among them and those entitled to take by representation in equal shares according to the rules of descent heretofore existing. If any balance remains after every person capable of taking the same shall have taken the amount or value he or she is entitled to take, the same shall escheat to the State, as in cases where there is no person capable of inheriting the estate. If in any case, a person shall be entitled to take both by descent and by will from the same decedent, the aggregate in value or amount he or she may take, shall not exceed the amount he or she is capable of taking by one of these ways.

§ 3. The inventory required by law to be made by an executor or administrator, in addition to the matters now required to be stated therein, shall also state the value of each piece or parcel of real estate of which the deceased died possessed, or was in any way entitled, and the total value of the whole estate, real and personal; which statement of the total value of said estate, shall be conclusive upon all persons who shall claim any interest in such estate by descent or under the will of the deceased, by virtue of this act, unless the same is changed as hereinafter provided. Upon a sworn petition of one or more persons interested in the estate as heirs or distributors, showing that such total value is too low or too high, the court shall appoint three disinterested persons to revalue the estate, who, being first sworn to make a just and true valuation thereof, shall revalue the same and make returns of their valuation, which, unless set aside for fraud or mistake, shall be conclusive as to the rights of all persons claiming or to claim any interest in said estate by descent or under the will of the deceased. In all cases where a specific article or piece of real or personal property is given or devised by will, the value thereof may be inquired into in such way as the Probate Court shall direct.

§ 4. In the proof of heirship it shall not be necessary to show other than the heirs who will be entitled to share in the estate, taking into account the limitations contained in this act. Only such heirs or distributees as shall appear to be entitled to share in the estate, need be notified of the final settlement by the executor administrator.

§ 5. Before the final settlement of the estate, or with a view to making such final settlement, the court shall find the total value of the estate, and who are the heirs or persons interested therein as heirs, legatees, devisees, or distributees, and the nature and amount of their respective interests, and may order the whole or any part of the real or personal estate, or both, to be sold, and the proceeds brought into court for distribution according to the rights of the parties, or may declare the rights and interests of the respective parties in the respective pieces and parcels of real estate, and may make any and all orders that may be necessary to carry into effect the provisions of this act.

§ 6. Every gift, conveyance, transfer or disposition of any real or personal estate made with intention to defeat the operation of this act shall be void.

§ 7. All acts or parts of acts inconsistent with the provisions of this act, are hereby repealed.

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* The Hon. L. Hammel has introduced a similar bill to the above, so far as wills are concerned, into the Assembly of Wisconsin.

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THE JURY QUESTION IN CRIMINAL CASES.*

The aim of all criminal prosecutions in this and other well-governed realms being the detection of crime and the punishment of criminals, it is often desirable, and sometimes imperative, that we should consider the systems in operation, so as to ascertain whether or not all or any of them are complete, and, if not, to determine on the best means to be adopted for their improvement. In so considering these systems of criminal prosecutions, one is struck with the marked difference in the methods adopted in England and Scotland respectively in the endeavor of the authorities to reach the same end. Indeed, in several points the two systems are entirely at variance. In regard to these points of difference on which this uniformity could advantageously be resorted to, we propose, here and now, to confine our remarks to one portion of the present systems, viz., *the jury question*, and, after examining the subject, suggest what to us appears to be improvements on both systems, and which improvements could be utilized in both countries.

The first point, then, that presents itself for our consideration, and on which there is difference of opinion in England and Scotland, is *the number of jurymen*. In Scotland the number is fifteen, while in England it is twelve. Now, after much thought, we have come to think that in both cases the number might well, and without prejudice to any one, be reduced. We are of opinion that the number suggested by the royal commissioners in their report, viz., nine, is very fair indeed. To call upon forty-five jurymen to attend the sheriff court,

* Extracts from an able article signed J. L. in "The Journal of Jurisprudence and Scottish Law Magazine," for January, 1887.

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when fifteen only are required, is not by any means a satisfactory state of matters. True, the prosecutor and the prisoner have each the right to challenge five out of the number, and it is also true that if there be four prisoners the aggregate number they are entitled to challenge amounts to twenty, and with the five challengeable by the crown the total number would be twenty-five, which must be provided for in case of any accident, and to allow the parties *in causa* to exercise their rights if they think proper so to do; and, of course, there may be others who may be excused from serving for various reasons. But we regard this as simply an objection in theory, because, of the many criminal trials we have witnessed, we do not think that the right was exercised in more than a half dozen 'nstances. This reduction of the number of jurymen cited would diminish to a very great extent the burden imposed on those liable to serve. In courts like those of Edinburgh and Glasgow the hardship—might we not say, the absurdity?—is not so patent, but in a good many courts where usually only one solitary case is brought up for trial, it is painful to think that forty-five gentlemen are called away from their usual avocations to serve on the jury. We think that twenty-seven jurymen would be sufficient to call as the number of assize, reducing, of course, the number of actual jurymen to nine. This number leaves a sufficiently broad margin, we think, for the exercise of that right or privilege which has almost fallen into desuetude, viz., the challenging of jurors. This reduction is of great importance when we remember that for the circuit court of justiciary, in Glasgow, for example, the number of jurymen cited is one hundred. Now, if eighteen could be dispensed with in sheriff court cases, in which the number is forty-five, we think forty could be taken from the hundred at the circuit court.

The next point is, should the verdict be *unanimous, or should a majority suffice*? As is well known, in England the jury must be unanimous; while in Scotland the verdict of a majority is sufficient. In parliament, which is our highest example on this point, a majority is sufficient to make the law. We can see no good reason for thinking that a majority is not sufficient to administer the law.

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In all elections—parliamentary, municipal, school board, etc.—a majority even of one in a total vote of thousands is sufficient to determine the fate or the fortune of the competing candidates. In assemblies of all kinds and denominations the vote of the majority rules. In fact, if the English rule in jury trials were to prevail in all the concerns of life,—and if it is good in jury trials it surely must be equally good in other matters,—we would find ourselves so hampered that it would be impossible to go on with business, or even with life itself. The royal commissioners in their report recommend the verdict of the majority as at present in force in Scotland. We therefore think that it would be a great advantage to all concerned, and would likewise be a decided improvement, founded alike upon common sense and public policy, were the English system to be assimilated to that of the Scotch in this respect.

The remaining point is, *the verdicts the jury may return.* In England there are but two, *viz.*: "Guilty" and "Not Guilty." In Scotland we have these two, as also that of "Not Proven." Cases have occured, do occur, and will occur in which to establish out-and-out guilt or out-and-out innocence is simply impossible. Before a verdict of not proven is returned, there must be reasonable doubt in the case, and we must remember the laudable, just, and well-established principle of law, that a prisoner is entitled to the benefit of any doubt. It is a very serious matter, indeed, to convict any person of a criminal charge of which he may be innocent. Better let, it may be, a guilty person escape now and again than run the enormous and terrible risk of sending an innocent person into a felon's cell. The change that occurs to us as desirable in both the English and Scotch courts is that we should abolish the verdicts of "guilty" and "not guilty" entirely, and, in lieu thereof, substitute those of "proven" and "not proven." The verdict of "not guilty" is more limited than that of "not proven," which can easily include the "not guilty," but the "not guilty" cannot so easily include the "not proven."

On the whole, we are led to believe, without much hesitation, that, were the alterations suggested in this article adopted in England and Scotland, the adoption would be a decided movement in the right direction, and would lead up to the consideration and assimilation of other points in the systems of the respective countries, the final result of which would be to reach that goal we are all longing to see and striving to attain viz.: uniformity of procedure.

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WOMAN AND THE LAW.

Barbarism being man's first estate, his elevation above gregariousness, though distinctly marked, was not great. The institution of marriage waited centuries of progressive evolution. The first glimmer of its sunny dawn is so distant that it cannot be scrutinized except in a general way. It antedates tribal and civil governments and statutory law, though these gradations were interchangeable for continuous generations and centuries. They sprang from the relation of sex, the helplessness of offspring and the needful care of them. Experience in all matters is a thorough educator.

Promiscuity preceded polygamy, which in turn gave place to monogamy. Polygamy has always been a double-headed monster. In one form, women had plural husbands; in the other, men had plural wives. Polyandria is the most disgusting for many reasons. In Media, says Strabo, the law required the husband to maintain at least seven wives. As late as the Jewish dispensation under Abraham, David, and Solomon the plural wife system was practiced without limitation of numbers. But Thibet has been the nursery of polyandria, even permitting one woman to marry a whole family of brothers, making the eldest, chief. Strange as it is, polyandria encircles the globe. It is found in Thibet, Himalaya, Telingese, South India, Malabar, Ceylon, New Zealand; and crossing Russia, it comes to the front among the Aleutian Islands, the Cossacks, and springs forth in one or more of the Indian tribes in both North and South America. And the plural wife system is no less obnoxiously aggressive, and even

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presents its hydra-head in European Turkey, and in some of the Territories of the United States of America, among the Mormons; and most, if not all of the Indian tribes. Both forms were driven from Germany, Brittany, Africa and the United States, but a short time ago. (See Latham's Ethnology of 1859). The Hebrew Law (See Deut. xxv, 5 to 10 inclusive), presents a modification of polyandria; and indicates the transition from promiscuity. Polyandria came by the barbarous practice of killing female infants, except the first-born, whereby the sexes were unbalanced. When or wherever this infernal practice was abolished, the females, by reason of the decimation of the males in the wars, soon out-numbered the males, and hence, polyandria was soon forced to give place; and then polygamy or the plural wife system took root.

During these transitions, husbands and wives were obtained by purchase and sale, the same as property, and with no less brutality. In Bible times this barbarism prevailed as instanced in the case of Jacob and Rachel. Captive virgins were reserved by the Hebrews for wives and concubines, others were slaughtered mercilessly. Their daughters were disposed of without their consent on the principle of purchase or exchange. The marriage ceremony operated as the bill of sale, whereupon the new wife became the slave of her husband, who removed her to his tent or shanty amid fanciful and grotesque demonstrations.

As the process of evolution advanced, sons and daughters were permitted to express their choice, providing the consideration paid was not lessened, and the family dignity, or that of the throne were not compromised. Even to this day this relic of barbarism is practiced by the crowned heads of Europe. Personal rights and preferences are not suffered to dilute the royal blood, though it would be improved thereby.

The growth of population, vice and crime in the light of advancing intelligence, forced upon the thoughtful the necessity for the inauguration of the institution of marriage. At first some of the evils of promiscuity were sought to be remedied by the native Africans by circumcision, long before the Hebrews adopted it as a remedy, and as a religious duty.

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From the family relation arose the tribal; and from the tribal, national relations obtained. These were notable advancements, though some of the old gnarled roots are still sprouting, and are yielding pernicious fruit, even in the fair fields of civilization and those of mental and moral culture. But with these, it was soon manifest that monogamic marriage is the tie of an enduring cohesion of families, of society, of State and Nation. It was the first royal plant of moral and political power, and the rock upon which the "Son of Man" erected His ethical superstructure. He laid the axe at the root of every noxious tree, calling the human race to a life of practical purity—to something higher and holier than self-indulgence. Plato's ideal that women and children should be held in common, so that everyone whom we meet will be regarded either as father or mother, or son or daughter, or brother or sister, was by Him cut asunder, and the brotherhood of the human family established upon the sure foundation of love to God and man on the principles of justice, goodness, and equality of rights. In His view, woman had been ruthlessly despoiled of her rights and sent away like Hagar to the beasts of prey to end life where it began in barbarism.

Cultural advancement commenced in and was for a long time confined to a narrow circle, but it gradually extended its limits in parts of Europe and the United States to the very periphery of society.

In cultural elevation, woman has been subjected to disabilities by nearly all the higher educational institutions in both Europe and the United States. Happily, however, our free schools, except in Massachusetts, were not organized on such narrow and exclusive principles of sex. The broad chasms which have separated her from free access to the higher educational depositories should be removed, and the political chains which now restrain her from a participation in the rights of citizens should be cut asunder. In no otherwise can woman be elevated to be the fit recipient of the honor of a citizen of the United States under the Fonrteenth and Fifteenth amendments of the Constitution of the United States;

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for citizenship, especially under these amendments, implies the possession of the right to exercise the power of the elective franchise, notwithstanding the Hon. Ward Hunt, late one of the associate justices of the Supreme Court of the United States, when sitting as Judge of the Circuit Court of the United States for the Northern District of New York, in the case of the People v. Susan B. Anthony, decided otherwise.

Independent of these amendments under the common law and by the definition of the lexicographers of the United States, citizens had the right to vote and hold office. Bouvier, in giving the definition of citizen, says: "One who, under the constitution and laws of the United States, has a right to vote for Representatives in Congress, and other public officers, and who is qualified to fill offices in the gift of the people." (See vol. 1, p. 231, 4th ed.) Webster and Worcester, in their incomparable lexicons, give a like definition. In the case of Scott v. Sanford, (19 How. 404) the Supreme Court of the United States in defining the power of a citizen, says: those "who, according to our republican institutions form the sovereignty and hold the power, and conduct the government through their representatives." Justice Daniel in the same case, (p. 476) said: "Upon the principles of etymology alone, the term 'citizen' has always been understood as conferring the actual possession and enjoyment of an entire equality of privileges, civil and political." Such a participation in the functions of government, I affirm, necessarily clothes the citizen with the right to vote and hold office under the common law of the United States, and this conclusion is confirmed by Justice Washington, who possessed the brains of that family, outside of President Washington. In defining the meaning of the term "privileges and immunities" he said that "they included the right to exercise the elective franchise and to hold offices." (See Corfield v. Coryell, 4th Washington Cir. Court R., p. 271.) And the great Chancellor Kent adopted the sentiment by incorporating its language. (See 2 Kent Com., p. 71, and Amy, a woman of color, v. Smith, 1 Littell's (Kentucky) Rep., 326.) Such were the rights and powers of citizens under our republican government prior to the Fourteenth

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and Fifteenth amendments. Now we will look into these amendments and learn how the fundamental law stands touching the rights, privileges. and immunities of citizens under them, and who are citizens.

Fourteenth Amendment, SEC. 1. "*All Persons* born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the Uhited States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

"SEC. 2. Representatives shall be apportioned," etc.

"But when the right to vote at any election for the choice of electors for President," etc., "the executives and judicial officers of a State, or the members of the Legislature thereof, is denied to any male inhabitant of such State, being twenty-one years of age and a citizen of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State."

Fifteenth Amendment, SEC. 1. "The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color or previous condition of servitude."

Among the radical changes these amendments produced in the organic law of the Republic, I note the following improvements: *All persons* born or naturalized who are subject to the jurisdiction of the United States are citizens of the United States, and of the State wherein they reside. 2. No State can lawfully make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. 3. The States are inhibited from depriving any person of life, liberty or property without due process of law, and of denying to any person within its jurisdiction the equal protection of the laws.

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4. Only Indians not taxed are excluded from representation in the House of Representatives of Congress and of the States. 5. In the choice of elective officers for the United States and the States, if the right to vote is denied by any State to any *male citizen* of the age of twenty-one years, or is in any way abridged, except for rebellion or other crime, the basis of representation in such state shall be reduced in like proportion of *male numbers*. 6. The right of citizens of the United States to vote cannot be denied, nor abridged by the United States nor by any State on account of race, color nor previous conditions of servitude. 7. The United States and the States are inhibited from denying to citizens the privilege of voting; and as women are citizens, when of lawful age, they have the right to exercise the privilege of voting. "If the (Fourteenth) amendment," says Justice Bradley in the slaughter-house case, "as framed and expressed, does, in fact, bear a broader meaning, and does extend its protecting shield over those who were never thought of when it was conceived and put in form, and does reach social evils which were never before prohibited by constitutional amendment, it is to be presumed that the American people, in giving it their imprimature, understood what they were doing, and meant to decree what has, in fact, been done." (1 Abbott's U. S. Rep. 338.)

To the often repeated objection that incompetents are included in the term citizen I reply, that under the common law of the United States, lunatics, infants under the age of twenty-one years, and idiots are under common usage necessarily excluded from the exercise of the elective franchise, and from holding office; and hence, the States under these amendments, may as formerly regulate the exercise of these rights and privileges so invested touching such classes. But by these amendments, women as citizens as well as men; are invested with these rights, privileges and immunities, for they are included in terms, and among the enumeration are the rights of life, liberty, the acquisition and enjoyment of property, and the right to vote and hold office, for it is these that give security and value to all other rights and privileges. It is noticed, that by the Fourteenth amendment the prohibition

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of abridging the privileges and immunities of citizens, applies only to the States; but by the Fifteenth amendment this prohibition applies to the United States and the States. Therefore, if they presume at any time to make the attempt to deny them to any class of citizens, they are confined constitutionally even in the attempt, to male citizens under the penalty upon the State by a like diminution of legislative representation in male numbers. No infringement as to women citizens of lawful age is permitted. The language is clear and without ambiguity; and even if it were not, it must be construed to protect, rather than to infringe personal and political rights and privileges. It is, however, too pregnant and clear in meaning to allow of an importation antagonistic to its vitality, or a strained inference against women citizens because it is a newly granted or recognized power, even though it overrides previous notions and practices under the common law. The purposes of these amendments, like that of the Thirteenth amendment, giving freedom to our former slaves, were to reform the organic law in all the particulars wherein they differ from the former text of the constitution.

It is contended by some that the States are still authorized to deny citizens the privilege of voting as specified in the second section of the Fourteenth amendment; but the positive force of the first section is in nowise impaired thereby, except to *male citizens*, on the contingency of the denial by a State to male citizens twenty-one years of age of the privilege of voting; in that case, the legislative representation shall be reduced in proportion which such inhibited *male citizens* shall bear to the whole number of male citizens. Its manifest intention is to protect the privilege of colored *male citizens* to vote. The privilege of women citizens is in nowise disturbed thereby. The States, by the first section, are deprived of their former jurisdiction over this matter, and they cannot resume it, except by a positive constitutional restoration to them of the power; and no mere inference can be permitted to annul the positive force of this section, for the positive provisions of the second section sanctions the inhibiting clause of the first section, and in nowise qualifies it. And the prohi-

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bition contained in the Fifteenth amendment, on account of race, color and previous condition, applies to citizen wives as well as to former slaves, for in Great Britain and the United States, wives were legal servants to their husbands under the common law. One of the early legislative reforms in Great Britain was secured under Lord Melbourn's ministry, whereby the difference between an English wife and a slave, was recognized by giving to wives of irreproachable character who lived apart from their husbands on account of their immoralities, the right to have occasional access to their infant children by the permission and under the control of the equity judges. This bill, granting so little to wives, was long and fiercely fought by members of Parliament and the House of Lords. (See McCarthy's History of English Times, vol. 1, p. 125). Unlike sons and daughters, wives under the common law, never became of lawful age nor free women during the life of their husbands.

Whenever human development in the United States becomes sufficient to vindicate the true legal status of woman under these amendments, it is hoped there will be found on the Federal bench of our judicial tribunals, if not on the bench of the several states, men of judicial instincts, who, like Lord Mansfield in the Somerset case, will have independence sufficient to fearlessly declare woman's personal and political freedom, and rightful status under these amendments. Senator Matt Carpenter in advocating the Fourteenth amendment said: "It protects every citizen, black or white, male or female * * * the privileges and immunities I vindicate to colored citizens, I vindicate to our mothers, our sisters and our daughters." (See Chicago Legal News, 4 vol. No. 15).

These personal and political rights invested in all the citizens of the United States, and of the States which include women as well as men, are pre-eminently the most vital of all others, for otherwise the disfranchised are slaves to those who exercise political power; for governmental power over those deprived of participation in electing its officers is unmitigated and unqualified tyranny.

Woman should be the responsible counterpart of man, shar-

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ing with him equality of "rights, privileges and immunities" as a citizen under the constitution of the United States, as amended.

Marriage contracts, instead of being made by parents on the basis of purchase and sale, should be entered into by the parties entering into the relation, based on considerations of equality, love, mutual affection, character, and a cultured morality; and also having in view an enlightened regard for the mental and physical condition of the generation to follow the marriage union. The religious schools of our country need to reform their ethics so as to strike out from their marriage formulas woman's promise of subjectiveness, for the intelligent among them must know that they were derived from pagan notions.

Under the Feudal System, and that of the common law, subordination was the legal condition of woman instead of equality of rights and privileges. From this condition, municipal law in some of the States and Territories have relieved woman from many of her legal disabilities; but none have declared for equal justice in her behalf. When the people of the United States insist upon the eradication of all discriminating legislation based on the consideration of sex touching political rights and privileges—making justice between the sexes the rule of adjudication in all the forums of civil government, the United States will rise rapidly to the zenith of power.

The Law of Marriage in the Churches.

The law of marriage in the Christian church differs somewhat in matters of eligibility and control in the several denominations; but the original basis rests mainly on Bible doctrine touching the relation of sex. The Old Testament (iv ch. Exodus) forbids the marriage of Israelites with Canaanites, declaring those who violate the command, idolatrous enemies of God, and consigns them to utter destruction.

The New Testament doctrine declares that "The wife is bound by the law as long as her husband liveth; but if her husband be dead she is at liberty to be married to whom she will, *only in the Lord.*" (1 Cor., 7 ch., 39)

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Second Cor., 6 ch., 14, makes the inhibition applying to church members universally binding by adding, "Be ye not unequally yoked with unbelievers."

The Grecian, Roman and Protestant churches have, with uniformity of purpose endeavored to enforce these rules, but have failed to compel observance by their peoples.

The Roman Catholic church declares marriage to be a sacrament. Truly, its sacred character cannot be denied.

The Presbyterian rule states that, "It is lawful for all sorts of people to marry who are able with judgment to give their consent, yet it is the duty of Christians to marry *only in the Lord.*"

The Episcopal rule is a little more dogmatic, requiring the wife to obey her husband, but in effect substantially the same.

The Methodist rule is as follows: "Let every preacher publicly enforce the apostolic caution, 'Be ye not unequally yoked together with unbelievers.'"

All other Christian denominations have in essentials, like rules, but their members, apparently, pay little attention to them, and therefore, the several denominations submit to the municipal laws of the State in which they are located in matters of both marriage and divorce.

Municipal Law of Marriage.

The law of marriage differs in matters of eligibility and control in the several States, but its original basis rests mainly on the common law touching the relation of sex; and while municipal law varies in details in the requisites of eligibility of marriage and causes of divorce, there is a substantial uniformity in principle and purpose; and therefore, this uniformity in principle may be properly denominated the common law of the United States in both marriage and divorce, which may be stated under two heads:

First, Marriage is "the civil status of one man and one woman united in law for life under the obligation to discharge to each other and the community those duties which civil government holds incumbent on persons whose association is founded on the distinction of sex. Its source is the law of

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nature, whence it has flowed into the municipal laws of every civilized country and into the general law of nations." (1 B., M. & D. Sec. 3). Its first estate is older than human society, for society rests upon it, and is dependent upon it for the purity and happiness of its members; and while it is recognized as a civil contract by the law for the protection of civil rights, it proceeds from the higher and more vital relations of two persons united in wedlock for the happiness of each alike, and for the perpetuation of the race through the co-relation of sex; and while it is an executory contract to marry, it differs from all other in this, it does not superinduce the status of marriage, for on its violation an action may be maintained by the injured party to recover damage for its breach, but not for its enforcement according to its terms. But when the contract is executed by a lawful marriage, its character is changed and merged into one of a more exalted nature denominated the status of marriage, whereby the parties have become husband and wife, and in legal contemplation, declared to be one in the status of wedded life, and as such panoplied in the attire of purity and lawful generation from which flow the streams of parental, filial, fraternal and social bliss. (ib). No mere contract is so fruitful of good, no other relation is so high in the scale of personal blessing, nor fraught with such joyful and hopeful results. Its every promise is a good not only to the parties, but to society and the State.

What is termed marriage by proxy, is not recognized by municipal law, or by custom in the States; and hence, to be of validity, it must be consummated by an actual marriage in due form, or by cohabitation as man and wife; for in civilized States, offspring reared in family relations, is the controlling purpose of marriage. If not so consummated, it may be considered to be in the nature or condition of an agreement signed by the contracting parties, and held in *escrow*, awaiting some certain contingency or condition to be accomplished before its complete execution by delivery in due time and form. But space is too limited to discuss this question in this paper. For many reasons the status of marriage being more than

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a mere civil contract, it is watchfully cared for by the courts and by legislative assemblies.

Second. The law of divorce. In civilized nations the law of divorce does not permit the marriage relation dissolved by agreement. All other contracts may be. It being settled that marriage is more than a mere contract—that is, a recognized institution in society and the State, therefore, a wife is not subject to purchase and sale, nor to the caprice of any one. Right here we find the vital and distinctive diverging judicial point, hence, the confusion of opinions and of decisions of the courts in the States upon the status of marriage and its dissolution for cause.

The rule laid down by Moses, or rather oy the priests of the temple at Jerusalem in the "Book of the Law" (Deuteronomy) which is said to have been found by them in the temple in the reign of Josiah, like the heathen custom, permitted the husband to put away his wife, by *divortium sine causa, vel sine ulla querela,* that is, by divorce without cause or complaint. (See Deut. xxiv, 1 to 4 inclusive).

The "Son of Man" insisted, and Christian nations hold the marriage tie to be sacred and abiding, except in case of unfaithfulness to the marriage vow, or for fornication and adultery. (See Matt. xix. 9; do v, 31, 32; Mark x, 2 to 12 inclusive).

Abraham divorced Hagar and sent her and her son into the wilderness without fault on her part, with only a little bread and a bottle of water to die of starvation. (See Gen. xxi, 14 to 21 inclusive). His action was in accord with heathen practices at the time. Among the Romans, marriage being a conventional union in fact, it was dissolved by mutual desire, or by the capricious will of the husband after the heathen custom as before stated. In the first centuries of christianity great laxity in matters of marriage and divorce prevailed until the Empirical decree of Constantine the Great, inhibited the dissolution by the consent of the parties, but Theodocius and Valentinian rescinded the edict, and the old pagan custom was revived. But by the Canon law of the Roman Catholic church, marriage being regarded as a sacrament, it could not be dissolved ex-

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cept by papal authority, though marriages contrary to St. Paul's rule, that is, a Christian married to an unbeliever, the marriage might be declared null *ab initio*. These narrow grounds were not generally acquiesced in by the European Catholic States. The rule adopted by the Council of Trent in 1562 A. D. declared the marriage tie indissoluble even after the commission of adultery by one of the parties. But the Protestant Reformation caused this rule to be disregarded in Protestant States. In civil governments where the common law prevails, three kinds of divorce are recognized by courts of competent jurisdiction, as follows:

1. By a decree of nullification *ab initio* on grounds of consanguinity, previous marriage of one of the parties whose bond remains, mental or physical incapacity, coercion, and for fraud. 2. By decree *a mensa et thoro*, from bed and board. 3. By decree *a vinculo matrimonii*, from the bond of marriage.

In Great Britain the law of divorce was for a long time administered by an ecclesiastical court, which constituted a part of the ecclesiastical law of the realm. But the act of the 20th and 21st Vic., ch. 85, of 1857, deprived these courts of that jurisdiction, transferring it to a new court entitled, "The Court for Divorce and Matrimonial Causes." A subsequent act the same year took from the ecclesiastical court its jurisdiction over testamentary causes, and gave it to a new court. (See Bish. M. & D. Sec's 30 & 65).

In administering the law of divorce in the United States, it should be borne in mind that the matrimonial and divorce laws of Great Britain entered into the common law, and from thence was imported into the States of the Union except Louisiana and California, where the civil law was adopted. Soon after the admission of California into the Union she exchanged it for the common law. The bed rock of the common law came from Manu and traveled down through India, Egypt and Greece to Rome, where commissioners appointed by Justinian codified it into the civil law; and Great Britain reformed it, and entitled it the common law; and our forefathers brought it with them to this country and it became the bed-rock of the common law of the United States and Territor-

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ies. As matrimonial courts were never an integral part of the judicial system of the United States, it was necessary to supply the hiatus by statutory law before actions of divorce could be entertained; but a contract of marriage could, as now, be annulled by a court of superior equitable original jurisdiction for fraud, etc., as before stated. But for a violation of the marital vow nearly all of the original states reserved to their several legislatures sole jurisdiction. South Carolina, however, omitted to provide any legal proceeding for divorce, hence, her supreme court reports are almost barren of divorce proceedings.

Since the early times of our nationality, great changes have been made in the statutory laws of the several States, differing from each other, especially upon the question of divorce. All now include Bible or New Testament causes; and some include habitual drunkeness, cruel treatment, refusal of support, abandonment, conviction of a felony, etc.; and hence some of the States have statutory provisions in regard to qualifications for marriage and modes of procedure, and they do not agree in their requirements of fitness and modes of consummation of marriage. These differences are prolific sources of judicial conflicts in some of the States, especially as to the validity of decrees of divorce in sister States on statutory causes, which their State law does not provide. Massachusetts and other States in violation of Sec. I. of Art. IV. of the Constitution of the United States, which provides that "Full faith and credit shall be given, in each State, to the public acts, records and judicial proceedings of every other State," have denied this full faith and credit, etc. The Supreme Court of the United States, on appeal of one of such cases, has given full force to this constitutional provision. But recently, a Massachusetts court, in the face of this decision, held the decree of divorce in a sister State invalid, because the statutory cause on which it was granted, was not a statutory cause in Massachusetts. These conflicts suggest an amendment to the Constitution of the United States, vesting in the United States jurisdiction over matters of marriage and divorce.

Lord Robertson, a Scotch judge, held that marriage is a

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contract *sui generis*—of its own kind, and that the status of marriage is *juris gentium*—by the law of marriage, resting upon the consent of parties; but not regulated wholly by the agreement of parties, it being subject to municipal regulation over which the parties have no control, hence it is distinguished from all other or ordinary contracts; therefore, the rules of law applying to all other contracts may not apply to this. For this confers legitimacy on children, regulates relations of consanguinity, and enters into, and pervades the family and social systems of society and of civil government. (See Story Conflict, secs. 108, 109, 111, 1 Bish., M. & D., sec. 6; Mcguire v. same, 7 Dana 181; Ditson v. same, 4 R. I., 87, 101-2).

When a statute provides causes for divorce without designating a forum of jurisdiction it must be exercised by a superior court of original jurisdiction, according to the law of the State. "This view," says Mr. Bishop, "though opposed apparently by some cases which, to the casual eye, are adverse, is substantially borne out by other and direct adjudications which may be deemed to have settled the law as thus stated." (ib. sec. 71). In England, the ecclesiastical courts, which, for a long time administered the laws of marriage and divorce, were held to be a branch of the common law: and it has been in like manner so determined by the courts of the several States, though this branch of the common law in the States never had ecclesiastical courts. (ib. sec. 57, 68.)

Chancellor Kent held, in the case of Williamson v. Same (1 Jhn. ch. 488), that, "the general rules of English jurisprudence on this subject must be held as applicable, under the regulations of the statute, to this newly acquired branch of equity jurisdiction, and when the legislature conferred on the courts the power to grant divorces, it intended that those settled principles of law and equity, on this subject, which may be considered as a branch of the common law, should be adopted and applied." He also held in the case of Barrere, (ib. 187), that, "in the United States the common law of England was a supplemental part of the law, (of New York) and was a brief, chaste and rational code and contrasted favorably with the common law of the Roman Catholic countries."

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The all-controlling power of the common law was, in a striking manner, recognized by the courts in Massachusetts and Wisconsin when their statutes invaded the common law in the matters of marriage and divorce, by construing them by the rules of the common law, and so giving their statutes, in fact, a different meaning than the words of the Acts seemed to indicate: and for the reason, that, thereby, the inherent rights of persons under the common law were infringed. (Middleburgh v. Rochester, 12 Mass., 363-5: 1 Bish., M. & D., secs. 9 to 95.)

The maxim *expressio unius est exclusio alterius*, does not apply in such case, and only applies where the statute establishes something new in the law, without violating inherent rights, and does not apply when the statute was made as a modifying adjunct of the common law. But if the statute covers the whole ground of the common law with *new substantive* provisions and modes of procedure, it then would operate as a repeal or displacement of the common law; and in that case, the new substantive statute and new mode of procedure would regulate the mode of marriage and divorce. Statutes, however, rarely cover the whole ground of the common law, therefore, the common law rules usually prevail to their full extent, though the new statute affirms them only in part. To the great annoyance of the people, the statutes in the several states for many years upon marriage and divorce and other matters have been in a state of flux, and especially upon the rights and privileges of women. During woman's forced debasement in all the centuries past, she has exercised a wonderful—a marvelous power over man in all his walks and duties of life; but if her rights and privileges were awarded to her on principles of exact justice, her power over him would be, as it ought to be, vastly greater and wiser, and, therefore, the good of families, of society and the State demands the recognition of her full enfranchisement in all the States and Territories. In fact, the contract and status of mariage, in principle, involves absolutely the mutuality of rights and privileges between the parties on principles of equality and justice.

The effects of divorce *a vinculo matrimonii* differ in the sev-

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eral States. In most of the original States, the divorced, or guilty party, is inhibited from marrying again, and forfeits the right of dower or of curtesy as the case may be. In Illinois and some of the other States, after the decree of divorce, both parties thereto are permitted the right of marriage again.

Property belonging to a woman before marriage, and that which she may lawfully acquire after marriage, remains hers after a decree of divorce, unless by her consent or acquiescence, it is merged with that of her husband in such a manner as to be indistinguishable from his. (See U. S. reports, James Sykes v. Eleanor Chadwick.) This rule, as it stands should be modified, for it is manifestly partial, if not unjust. To be in any wise equitable, it should be reformed at least in such a manner as to apply to the property of the husband when merged with his consent or acquiescence with that of his wife. The false standard of the rights of woman as compared with those of man has been so long upheld by common custom, that the keenest intellects, though meaning exact justice, have unwittingly overlooked the many frauds that have obtained, and have been practiced upon women in their relations as wives and citizens under the law.

C. M. Hawley.

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THE VETO POWER OF THE SUPREME COURT.

The Federal Constitution has established, as far as written language can do so, a boundary line between the sovereignty of the States and the sovereignty of the United States; the line where State sovereignty ends, and where federal sovereignty begins. As along that line it was foreseen, because language is not perfect, and man is finite—doubtful questions might arise between them, which might lead to conflicts of force to be decided by arms, it established,—

A *supreme court*, as the appellate tribunal of last resort to decide those doubtful questions in all cases at law or in equity arising under the constitution, laws and treaties made under its authority.

That tribunal holds the balance, and decides when a law made by the federal government invades the rights reserved to the States, and when a law made by the States invades the sovereignty of the United States.

That tribunal holds the greater veto or tribunitian power in our system—greater than that of the president. He has power to require a law to be passed by two-thirds of each house of congress. That court has power to veto a law if passed by both houses unanimously. It vetoes the laws of the federal legislature not authorized by the constitution, and it vetoes laws made by State legislatures when they encroach upon the domain of national sovereignty. It does this whenever a case is presented at law or in equity for decision in regular form.

As I have already said,

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NO OTHER JUDICIAL TRIBUNAL OF THE WORLD EVER HELD SUCH A VETO POWER.

In the Roman republic ten tribunes were annually chosen. Dressed in simple garb, with no warlike emblems about them, their appearance was modest and humble, but their persons were sacred and inviolable. Their force was negative rather than positive. It was suited rather to defend than to assail—rather for opposition than for action. "They were instituted to defend the oppressed; to pardon offenses, to arraign the enemies of the people; and when they judged it necessary, to stop by a single word the whole machinery of government." (1 Gibbon, 80.) That word was *veto*.

They held office for a single year, but during that time they held the pardoning power; they constituted in their day the committee of investigation and of impeachment; and they exercised that great power of the veto, which is necessary to be somewhere in every great republic—a power not to make aggressions, but to resist them; a power, not to attack, but to defend; a shield, but not a sword.

Under our complex system, where two forces or tendencies are ever at work, one to draw all powers to the federal sovereignty, and the other to draw all powers to the State, it is absolutely essential to its preservation that such a tribunal should exist; and to our supreme court is confided the power to decide all cases arising under the constitution in judicial form; and from its decision in the case before it, there is and can be no appeal. It is final in that case, whether in favor of federal or State authority. Do not understand me to say that its decision is always right. That would assume the judges to be more than men. But from its constitution that tribunal is more likely to be right than any other we could select. In ninety-nine cases in a hundred its decisions are right.

But in case it decides wrong, it is better even then to have that decision final, as to the parties in that case, than to leave the matter undecided, and, for the want of sueh a tribunal, to leave things to float, it may be into a conflict of force, which might end in civil war.

Do not understand me, either, as saying that the decision

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of that court, in any case, prevents the same question from being raised and discussed in another case; or, that if that tribunal becomes satisfied a former decision was erroneous, it has no power to reverse it in another case. This, in fact, does occur, sometimes, in that tribunal; though, from its wisdom, prudence and deliberation, it occurs very seldom.

IT IS THE DUTY OF THAT COURT

to guard and defend the reserved rights of the States, as much as it is to assert the rights and authority of the Union. Its greatest office and duty is to hold an even balance between them, leaning, in doubtful cases, in favor of the States; and, by their decisions, to annul all laws, orders and decisions made under State authority in conflict with the constitution; and, also, while enforcing constitutional laws and orders made under federal authority to annul and veto all in conflict with the same constitution; and thus to mark and to establish the boundary line between independent and distinct, but united sovereignties, and by peaceful arbitrament to redress and to restrain the invasion of either.

It is no part of my purpose to point out that line, or boundary; to show what powers have been delegated to the federal government, and what have been reserved to the States;—to show how much of sovereignty belongs to the United States, and how much of sovereignty is reserved to the States.

It has been my purpose rather to show that each is sovereign; but neither is absolute. Both are limited sovereignties.

The truth is our great republic is neither a confederacy, nor a centralized despotism, but it is something far better than either, it is a federative republic; the only form of government under which a nation may become great among the powers of the earth—continental if you please—and at the same time, preserve republican or self-government by the people.

It will be observed that these views do not accord with the views of those who maintain that all sovereignty belongs to the United States, and that the States have no reserved rights which the federal government is bound to respect; nor do they accord with the views of those who maintain that all

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sovereignty belongs to the States, and that the federal government has no sovereignty, rights or powers which the State is bound to respect, and which it cannot at its own sovereign will and pleasure refuse to obey.

These views are as far removed from the one extreme as from the other. They are as much opposed to the doctrine of centralism as to the doctrine of secession. The one leads to empire, the other to disunion.

Extremes often meet. The reasoning of the centralist and that of the secessionist is, at bottom, the same. This is their syllogism:

The centralist says: There can be but one sovereignty over one people, and that must be absolute. It cannot be limited or divided. I am for the Union, therefore in the name of the Union, and for the sake of the Union, I demand all sovereignty for the federal government.

The secessionist says: I agree with the centralist; there can be but one sovereignty over one people and that must be absolute. It cannot be limited or divided. The liberties of the people cannot be maintained without republican or self-government by the people in every State. Therefore, in the name of liberty and for the sake of liberty, I demand all sovereignty for the State. Without that no liberty is possible.

THE FAULT OF THIS REASONING OF THE CENTRALIST and secessionist is the same, viz.: That sovereignty cannot be divided, bounded or limited by a written constitution. There can be no such thing as a balance or equilibrium of forces established for civilized man.

The true and fundamental theory of our system is that the United States is clothed with national, but limited sovereignty to make us one people and one power among the nations, and to maintain free trade and commerce among the States, while the States hold distinct and independent sovereignty as to all other political powers not committed to the federal government, nor prohibited to the States.

The syllogism upon which its reasoning is based is this:

The sovereignty over the same people may be divided, a portion be committed to the federal government, under the con-

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stitution, and the remainder be reserved to the States by the same constitution. We demand sovereignty for the United States to preserve union and peace at home, and to maintain our nationality abroad. We demand, also, the sovereign right of the people of each State to a republican form of government in order to secure the liberties of the people. We demand union and liberty. We maintain therefore, that both the union of the States and the independence of the States are secured under the constitution.

Not only Madison, whose wise counsels did so much to form the constitution, but Hamilton, whom the modern centralists profess to follow, in one of his ablest papers supported this theory. "The State governments," said he, "would clearly retain, after adopting the constitution, all the rights of sovereignty which they before had, and which were not by that act delegated to the United States." Hamilton and Madison differed, it is true, as to the powers delegated and reserved, but they never doubted that, as to the powers delegated, the federal government was sovereign; and, as to the powers reserved, that the States still remained sovereign under the constitution.

I have thus, upon this great and fundamental question of constitutional law, endeavored to show that the reasoning of the centralist is as false as that of the secessionist. While that of the secessionist would destroy our Union under the constitution, and make it a mere rope of sand, that of the centralist would destroy the rights of the States, reserved by it, and with them, the liberties of the people. To render these conclusions more satisfactory to the professional mind, I will offer a few cases decided by the supreme court of the United States; by that tribunal which was created to speak, and to speak with authority on this question.

We shall find, as we look into them, that the balance of power between national and State sovereignty has been steadily held by the supreme court on many occasions.

THE UNIFORMITY OF ITS DECISIONS

for three-fourths of a century is unbroken. According to these decisions the United States are not subordinate, but sovereign as to all the powers which are delegated by the con-

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stitution; and the States are not subordinate, but sovereign as to all the powers reserved. As to all the powers granted to the Union, the United States are one nation and sovereign. As to the powers reserved to the States they are all independent and sovereign.

I refer to but few, among many, of those decisions. They clearly recognize, declare and establish this great doctrine as that upon which alone liberty can exist without secession, and union without despotism.

In 1803, in the case of Marbury against Madison, that court unanimously held "the government of the United States to be one of limited and defined powers; and that these limits may not be mistaken or forgotten, the constitution is written." (1 Cranch, 137.)

In the name and by the authority of the constitufion, that high tribunal then, for the first time, exercised its great tribunitian power, and declared an act of congress repugnant to the constitution null and void. It was its first veto upon the usurpation by congress of unconstitutional power. This case also recognized that tribunal as the one to hold the balance of power—to decide what is within and what is without the domain of federal sovereignty.

The next case which I notice arose in 1819—McCulloch vs. Maryland. The opening sentence of Chief Justice Marshall, in giving his opinion, is full of meaning on this very question. He says: "In the case now to be determined the defendant, a sovereign State denies the obligation of a law enacted by the legislature of the Union; and the plaintiff, on his part, contests the validity of an act which has been passed by the legislature of that State." You see at a glance this case brought before the court a discussion of the conflicting sovereignty of the government of the Union and that of one of the States. The court approached the question with the deepest sense of its importance and of its own responsibility, because on that tribunal alone was devolved that important duty. (2 Wheat., 400.)

The question was presented by the counsel for the State of Maryland in the strongest light. He maintained that all the

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powers of the United States were delegated by the States; that the States alone were sovereign; and, therefore, the powers of the federal government must be exercised in subordination to the States, which alone possess supreme dominion. Here was the logic of one extreme; the logic of secession. The supreme court rejected that doctrine, and held the United States, as to all the powers delegated to it, to be

NOT SUBORDINATE TO THE STATES, BUT SOVEREIGN.

By the first decision I have referred to we have seen the supreme court veto a law of congress as repugnant to the constitution.

By the second, while it expressly admitted the sovereignty of the State of Maryland on other subjects, it asserted the sovereignty of the Union over the subject-matter in question, and it vetoed the law of the State as repugnant to the constitution.

A careful study of this great and leading case will show that the court rejected the logic of the centralist, and rejected, also, the logic of the secessionist.

The court held, and their opinion was unanimous:

1. That the government of the Union, though limited in its powers, is supreme within its action.

2. That under our constitution the powers of sovereignty are divided between the government of the Union and those of the States. Each is sovereign with respect to the objects committed to it; and neither is sovereign with respect to the objects committed to the other.

The question was whether the States had power to tax a bank created by the United States. The supreme court held that taxation is an incident of sovereignty, and that the sovereignty of a State could tax everything existing by its own authority, but could not tax what existed by the authority of the sovereignty of the Union. If we measure the power of taxation residing in a State by the extent of sovereignty which the people of a single State possesses, and can confer on its government, we have an intelligent standard; we have a principle which is safe for the States and safe for the Union. We are relieved, as we ought to be, from clashing sovereignties;

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from intervening powers; from a repugnancy between the right of one government to pull down what there is an acknowledged right in another to build up; from the incompatibility of a right, in one government to destroy, what there is a right in another to preserve.

Again: in 1824, in the case of Gibbons vs. Ogden (9 Wheat, 210), that court again held the balance, in our complex system, with a strong hand, between the conflicting claims of sovereign power; between that of the Union, which extends over all the States, but possesses only certain enumerated powers, and that of one of the States, which has acknowledged sovereignty over all the remaining mass of powers not delegated to the Union; and that court again affirmed the same doctrine as that by which alone, our confederate republic—the Union of many States in one—can live, and move and have its being.

Again: In 1839 that court, in speaking of the sovereignty of the State of New York (11 Peters, 139), said: "We choose to plant ourselves on what we consider an impregnable position. It is this: That a State has the same undeniable and unlimited jurisdiction over all persons and things within its territorial limits as any foreign nation, when that jurisdiction is not surrendered or restrained by the constitution of the United States.

Again: In 1839, in the case of the Bank of Augusta vs. Earle (13 Peters, 585), all the judges of that court agreed that the creation of corporations is an act of sovereignty, and that States create them by their sovereign power, but that such State corporations "can have no legal existence out of the boundaries of the sovereignty by which it is created. It must dwell in the place of its creation, and cannot migrate to another sovereignty." When it acts within another State, it is only by the comity of nations. "The comity thus extended to other nations," said that court, "is no impeachment of sovereignty." "Upon what grounds," it added, "could this court refuse to administer the law of international comity between the States? They are sovereign States, * * *

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and have adopted toward each other the laws of comity to their fullest extent."

Again: in

A FAMOUS CASE

arising in my own State in 1858, that court unanimously declared in Ableman vs. Booth (21 How. 516), that "a State is sovereign within its territorial limits to a certain extent, yet that sovereignty is limited and restricted by the constitution of the United States. And the powers of the general government and of the State, although they exist and are exercised within the same territorial limits, are yet separate and distinct sovereignties, acting separately and independently of each other, within their respective spheres, * * * as if the line of division was traced by land-marks and monuments visible to the eye."

Again: In 1870, after the civil war, with all it centralizing tendencies, and after the adoption of the Fourteenth and Fifteenth amendments, in the Tonnage cases, (12 Wal., 212), that great tribunal again declared that, outside the prohibitions of the constitution, "the power of the State to tax extends to all objects within the sovereign power of the State, except the means and instruments of the federal government."

And, still later, in 1872, that court held that the city of Baltimore was not liable to be taxed under the internal revenue act of congress, upon its income from railroad bonds, because the city of Baltimore was a portion of the sovereign State of Maryland.

That case as well as the case of the United States vs. Reese and Foushee (2 Otto, 221, and the case of the United States vs. Fox, 4 Otto, 319), show that the present supreme court since the civil war still asserts and exercises its tribunitian power. It still vetoes the laws of the federal government, whenever they are repugnant to the constitution, and invade the domain of the State sovereignty. It also vetoes the laws of the States, whenever they are repugnant to the constitution, and invade the domain of the national sovereignty. In the latter case, in language as strong as that of Marshall the court said: "New York is sovereign except where she has

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surrendered her sovereignty to the United States. The latter is sovereign for specific purposes; each within its proper sphere is independent of the other." It is a matter of just pride to know that that court, with Chief Justice Waite at its head, remains firm and true to its great office and duty—as firm and true as when presided over by Marshall, or Taney, or Chase.

God grant that that tribunal may continue to hold a just and even balance between national and State sovereignty, and thus fulfill their part in preserving our republic forever.

James R. Doolittle.

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PROPERTY RIGHTS OF MARRIED PEOPLE.*

It has been repeatedly said that in Illinois, the property rights of men and women are equal under the law, and one can readily see, in looking over the statutes, the especial efforts which the later legislatures have made, to have the same provisions respecting property rights applicable to both husband and wife.

Thus, curtesy is abolished and dower given to both husband and wife. In the chapter on dower the same provisions apply to both. In the chapter on descent, which directs how property shall be distributed when no will is made, one provision covers both husband and wife. In fact, in most of the *statutes* relating to the property rights of husband and wife on the death of either, the name of the one might be substituted for that of the other without effecting any change in the present status.

But notwithstanding this, there is one thing which prevents these legislative provisions from effecting the just distribution of property that their wording would imply, and which renders the very equality which they seem to grant the cause of great inequality in the property rights of husband and wife. This obstacle is not the result of any positive legislation, but arises from the continued existence of some old common law principles, which have not yet been abrogated by legislation. The main principle to which I refer, is the refusal to recognize the financial value of a married woman's services.

* Read before the Illinois Social Science Association by the late M. Fredrika Perry, and published here by permission of Ellen A. Martin.

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Under the feudal system, when the basis of property rights was the ability to kill one's fellow men; when wrong, robbery, rapine, and injustice were the rule, and right and justice the meager exceptions; when brute force was substituted for moral right, and the only restraint upon wrong, the greater physical power of another, then it was not to be wondered at, that the value of a woman's work should be placed at zero. Now, it is an anachronism that would shock us, had we the power of looking at it otherwise than through the atmosphere of custom. This feature of the financial dependence of a married woman upon her husband, is not warranted by anything else existing in the relations of husband and wife. They contract marriage as equals; their social status is equal. Even those holding conservative ideas as to the respective spheres of man and woman admit the equality, saying that man and woman are "equal, but different." The wife can contract, with but one small exception, as fully as her husband. She is clothed with the right of holding, controlling, or disposing of her separate property as fully as he is. She can even contract with her husband.

Our statutes have removed common law restrictions as to a married woman's action, and given her full power over her property. There is only one drawback to her full enjoyment of this right, and that is the fact that in the majority of cases she has no property to control. In a large proportion of the marriages the husband and wife start life with little or no property. They toil on for years, the husband taking the role of the money-getter, and the wife that of the money-saver.

The wife works just as hard as the husband, but the money comes into his hands, and he, by that immemorial universal usage which is dignified by the name of common law, is awarded control of it, and the wife left dependent on him for support. In many cases the work of the wife is harder than that of the husband, because more continuous and unremitting. "Man's work is from sun to sun, but woman's work is never done," says the old adage. The life of a farmer's wife is proverbially a hard one. Then, too, to be a good house-

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keeper requires not only one trade or profession, as in the case of the husband, but many. The wife must understand laundry work, cooking and baking, sewing, dressmaking, and perhaps tailoring; be a neat housekeeper, bring up her children well, and do a multitude of other things, besides having all the responsibility for domestic matters, and, in many cases, all responsibility about the children, resting with her.

And what pay does she receive for all this? Simply a support. When we take into consideration the fact that a man has had his choice of work, while a married woman's work has been prescribed by custom, whether or not it were congenial to her taste, we can see the great injustice of giving to the man the choice of work, and because he has the choice of work, giving him, also, the control of all the funds accruing from their joint efforts, while the woman, with no choice, is made dependent on him.

Suppose that two young men should enter into a partnership, the terms of which were that one of them, taking his choice of work, should receive and control all the money coming into the firm, while the other, working equally hard, should receive only a support from him, with a promise of a third of the property in case he should survive the former, what would the verdict of the world be? Simply that the one was not capable of taking care of his own rights, and that the other was willing to take advantage of his ignorance. Nothing but custom prevents us from looking at the financial relations of husband and wife in the same light.

Of course there are exceptions to this. There are women in the world who do not work, just as there are men in the world who do not work; some on account of the possession of wealth, and again others who, without wealth, are simply a drag and burden on the husband; but, as on the other hand, there are marriages in which the husband is only a clog upon the wife, it is only fair to let these balance. Now, we are speaking of the average man and woman.

And just here I wish to say one word as to women who devote themselves to society and society duties. This is done usually by the desire of the husband as much as that of the

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wife. And when it is understood between husband and wife that these shall be the wife's duties, I can see no reason why she is not entitled to her share of the income, as in other cases.

Again, the want of capacity on the part of the wife cannot be urged in favor of the common-law doctrine, unless it be claimed that she deteriorates by marriage, as unmarried women manage their own income and property. As it is often said that marriage is the normal condition for woman, it will hardly be claimed that it is more deteriorating to her than an abnormal one.

The want of policy in creating a divided interest between husband and wife, is an argument equally without force, as, for many years, some women have held property separate from their husbands without yet overturning the domestic relation, and have lived just as happily as have others. There is absolutely no reason whatever, why a wife's right to control half the income and half the property acquired during marriage, should not be recognized and enforced by statute.

The influences preventing this act of justice are custom, prejudice and want of a thorough consideration of the subject. Husband and wife accept their respective positions—he, that of the nominal support of the family; she, that of a dependant—simply because their fathers and mothers have done so for ages before them, and it is easier to let things go on as they have been going than to effect a change. To man, it seems perfectly natural that woman should be dependent on him, because she always has been, and never having been in her position, he cannot realize the trial that it is to a person of mature years to be obliged to ask another for money, even if that other is her husband.

A lady of my acquaintance, the wife of a millionaire who is by no means a miser, says, that it is one of the trials of her life to ask for the money she needs, and that she invariably deputes her little child to do the asking, if possible. Children, of course, soon learn the relative financial positions of the husband and wife, and it often has a very detrimental effect so far as maternal authority is concerned. Sometimes they see

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the injustice of such an arrangement and endeavor to modify it. A young man of my acquaintance, knowing his mother's dislike of asking for money, suggested to his father that a certain part of the income be paid her monthly. His father was surprised at the idea that it was not perfectly agreeable to his wife to ask him for money, but soon saw the force of the suggestion, and adopted it at once, greatly to the relief of the wife.

The idea needs to be thoroughly promulgated and understood, that a wife's moral right to one-half the acquisitions during the marriage, is just as full and complete as that of the husband. The recognition of the legal right will then soon follow.

But it is said that financial relations between husband and wife are very different from those in an ordinary business relation—that it is all common property, all one interest; that the husband holds for the benefit of both. Leaving out of question a married woman's proverbial difficulty in obtaining money, let us look for a moment at a decision of our Illinois Supreme Court, rendered in 1875. The case is Padfield vs. Padfield, 78 Illinois, p. 16. The syllabus is as follows:

"Any disposition of personal property and credits by a husband in good faith, where no right or interest is reserved to him, either present or ultimate, though made to defeat the rights of his wife, will be good against her."

"Where a husband transferred to one of his sons, notes and evidences of indebtedness to the amount of $60,000 under an agreement that he (the son) was to have one-third, and at the donor's death, the son should deliver the balance to certain trustees for the donor's other two children, in consideration of which the son was to pay the father $2,000 annually while he lived, for support. HELD, that the transfer was based upon a sufficient consideration, and placed the property beyond the father's reach, and that the widow could not claim any dower in the same."

"There is nothing in the statute respecting estates of deceased persons, that in the slightest degree prevents the husband from disposing of his personal property free from any claim of his wife, whether by sale, gift to his children, or otherwise, in his lifetime."

Under this decision, a man whose personal property amounts to millions of dollars, though all acquired by himself and wife jointly during marriage, could dispose of it all during his life, so that his wife at his death would be left a pauper, and have no redress, even if it were his acknowledged intention to strip her of everything. The plain facts of the case

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are, that while husband and wife are living together, the wife, when furnished a support, has, with the one exception of a possible dower in real estate, no more legal right to the property accumulated by herself and husband than has an entire stranger. She is even prohibited by statute from charging it with her separate debts. The legislature, in its endeavor to make everything equal, passed a law that neither husband nor wife should be liable for the separate debts of the other. So far as the statute refers to the separate property of husband and wife, it is all right, but the effect is also that the wife can have no credit, beyond necessaries, on the score of their joint accumulations, and such a discrimination against her is unjust.

Let me give yet another instance of a married woman's legal inability to control any part of the income or property acquired during marriage. Suppose the husband and wife during the marriage accumulate $50,000. The wife's mother becomes dependent and a pauper. The wife has no legal right or power to use one cent of that $50,000 that she has helped to accumulate, to keep her mother from the poorhouse. All depends upon the will of the husband.

I said that there was one limitation to the statement that the wife had no control over the property. I referred to dower. If part of the property is in real estate, the wife, by refusing to sign the deed, can retain her dower interest, and it, if she outlives her husband, will be of benefit to her, otherwise not.

So far, we have been considering the property rights of husband and wife while both are living; let us look for a moment at the effect which the death of either would have on the rights of the other. And let me state here that it is in the statutes regulating the disposition of property after death, that we find the terms husband and wife used interchangeably and special efforts made to put them on an equal footing.

To show the state of the law, let me presume a case: Suppose a man and woman, named respectively John Doe and Sarah Roe, aged twenty-five years, and each being possessed of $4,000 enter into the marriage relation. They live together twenty-

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five years, and in that time accumulate $20,000 beside what each originally had. And to make our illustration fair, let us suppose that half of each $4,000 and half of the $20,000 is realty and the other half personalty. Let us suppose, then, that having attained the age of fifty years John dies, leaving no children and no will. In such a case the law provides that all the personal estate and half the real estate shall go to the surviving husband or wife. Apparently an equal and fair provision, but under it Sarah has, including her own $4,000, $22,000 absolutely and a dower interest in $6,000, making in all an equivalent of $23,282. On the other hand, in case of Sarah's death under the same circumstances, John has $27,000 absolutely, and dower in $1,000, amounting in all to $27,213, as against Sarah's $23,282. Sarah has also the widow's award allowed in settling estates, which varies in value, but is generally about $1,200.

The next most favorable case for the wife, when there are few or no debts, is where there are no children, and the husband or wife renounces the will and takes in lieu thereof and of dower, one-half of all the real and personal estate after the payment of debts. Here, including the separate property of each, Sarah would have $16,000 and the widow's award, while John would have $26,000. It must be noted that the two cases above referred to, and especially the first, are exceptionally favorable to women, there only being a very small proportion of cases in which there are no children and no will, and also but a small proportion of cases in which there are no children, even if there is no will.

The next case that we will suppose, is the most common one, viz.: where the husband or wife dies leaving children. Here the surviving husband or wife is entitled to one-third of the personal property absolutely, and dower in the real estate of the other, whether there is a will or not, if he or she renounces the will.

Here Sarah would have $8,000 (including her own $4,000) absolutely, and a dower interest in $12,000 amounting to $2,564, giving her in all $10,564, and with the widow's award to $11,764. John, on the other hand, has $24,666, and his

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dower in $2,000 ($427), making in all $25,093, against Sarah's $11,764. Let us recapitulate. Under exceptionally favorable circumstances Sarah would have $24,482 and John $27,213. Under other exceptional circumstances Sarah would have $17,200 and John $26,000, while in the most usual class of cases, Sarah would have $11,764 and John $25,093. In case the property were smaller the injustice to the woman would be more striking.

There is one case under the statute where husband and wife fare alike, that is when either dying leaves no relatives and no will, the whole property then going to the other; but as this almost never occurs, it cannot be taken into account.

It will be seen from the foregoing review that our statutes, while purporting to deal with equal fairness as between husband and wife, are unjust simply because of their non-recognition of a married woman's right to one-half the joint accumulations.

In asking the legislature to recognize a married woman's right to one-half the property acquired during marriage, we are not asking them to enter a new and untried field. California, Louisiana, and other States have, for years, by statute, expressly recognized a married woman's right to such property. We do not even ask for so great an innovation as has already been made by the statutes of Illinois upon the old common law. Previous to such statutes a married woman could not sue or be sued, could not make a will, nor could she even make a deed of her own property. She was divested, as far as possible, of all personality whatever. All her contracts, made either alone or jointly with her husband, were absolutely void. Until 1861 she could have no separate legal estate. Until 1869 she could only convey her separate property by a peculiar method of acknowledgment, and until that time she had no control over her own earnings. Until 1874 she had no power to make contracts so as to bind her personally. Notwithstanding these innovations, we see no changes in the stability of the state, government, or family. Matters go on as smoothly as ever before, and we have faith to believe

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that they would do so even after the passage of such an act as we ask.

The world is conservative in regard to granting power to those who have not held it, but of one thing we may be sure, that neither the family nor State will fall to pieces because of granting to a woman equal property rights with her husband.

In this connection, an incident related in the "History of Woman Suffrage" is interesting, as showing how one's ideas are influenced by his habits and associations: "Prof. Christlieb, a distinguished German clergyman, was, a few years since, in attendance upon the Evangelical Alliance in New York. After his return to Germany, a young American student called upon him with a letter of introduction, and was cordially received by the German, who, while he praised the United States, expressed much solicitude about its future. On being asked his reason he frankly expressed his opinion that the spirit of Christ was not there, and proceeded to illustrate his meaning. He seriously declared that on more than one occasion he had heard an American woman say to her husband, 'Dear, will you bring me my shawl?' and the husband brought it. Worse than this, he had seen a husband, returning home at evening, enter the parlor where his wife was sitting—perhaps in the very best chair in the room—and the wife not only did not go and get his slippers and dressing gown, but she even remained seated, and allowed him to find a chair as he could."

Had Prof. Christlieb been educated in America he would not have expected to see the United States suffer a dissolution because of the incidents related, while had Americans been accustomed to seeing a married woman's right to half the joint accumulations recognized, its denial would seem a great injustice.

As California and other States, which give half the joint accumulations to the wife, have been referred to, it is only fair to show to what extent they are just. The main provision of their statute is as follows: The estate which the husband or wife has on marriage, remains his or her separate estate, as does also all property coming to either by gift, descent, be-

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quest, or devise during the marriage. All that is accumulated after marriage belongs half to the husband and half to the wife; but at this point the California legislature, after recognizing the wife's right, does her the great injustice of providing that the control of the joint accumulations shall remain with the husband.

The natural supposition would be that the wife is as capable of controlling her half of the common property as she is her separate property, but the idea does not seem to have occurred to the law-makers. However, we owe them gratitude for their recognition of the principle of joint ownership.

A just and fair law would be similar to that just stated, with the exception noted. It would give to each his or her separate property, and an equal share in joint accumulations, the same as is exercised by a partnership of two men, two women, or a man and a woman, for there have been instances in which a man and a woman, in a business partnership, have managed to carry on their business profitably, equitably and fairly, and there is no reason why this should not be done in the marriage relation.

The only requirement that we would make as to distribution of property after death would be, that it should be equal to both. We ask equality—nothing more—that the financial dependence of a married woman be swept away, and there be left only that dependence which we all, as human beings, have on one another.

M. Fredrika Perry.

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THE MEDICO-LEGAL DEPARTMENT.

EDITED BY MARSHALL D. EWELL, M. D.

THE MEDICO-LEGAL SOCIETY OF CHICAGO.

At a meeting of the Medico-Legal Society of Chicago held at the Grand Pacific Hotel December 4th, 1886, a paper was read by Dr. Henry M. Bannister, a member of the Medical Staff of the Illinois Hospital for the Insane at Kankakee, upon the subject, "Needed Modifications of the Lunacy Laws of Illinois." We present our readers with this paper in the present issue. The writer has had a large experience in the management of insane cases, and his views formed after a long experience, are entitled to much consideration.

At a meeting of the same society held at the Grand Pacific Hotel, March 5th, 1887, a paper was read by Dr. E. W. Sawyer of Chicago, upon the subject, "Abuses of the Present System of Holding Coroner's Inquests."

The attention of practicing lawyers is called to this society as deserving of their patronage and encouragement; as a means of extending the knowledge of the profession, in medico-legal subjects (none too profound even in the best informed) we think it has no equal in the West.

Since our last issue, a bill has been introduced in the legislature of this State changing the age of consent to fourteen in girls and sixteen in boys; thus to some slight extent relieving the criminal jurisprudence of this State from justly deserved opprobrium. No other event of special medico-legal importance has, to the knowledge of the writer, transpired in this vicinity since our last issue.

The attention of the reader is especially invited to the paper of Dr. Bannister, post.

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DEFECTS OF OUR STATE LUNACY LAWS.*

For a number of years past there have been attempts made at each succeeding legislature, to modify in some respects the lunacy laws of Illinois, but so far without success. The necessity, or at least the advisability of some modification has been obvious I think to every one who has carefully studied the subject, and to no one more than to the members of the Board of Public Charities and their efficient secretary, Mr. Wines. Two years ago at the last session of the legislature, a very excellent bill was introduced by Senator Campbell and was supported by them, but probably owing to the special circumstances attending that session and the pressure upon it of more purely political measures, it failed to pass. I cannot be sure, but I trust that something can be done this coming winter under more favorable conditions.

What is offered in this communication is simply a few memoranda of practical objections to the present lunacy laws of Illinois that have been suggested to me in the performance of my duties as an officer of one of the State Hospitals for the Insane. Many or most of these objections were met and provided for in the provisions of Mr. Wines' bill above alluded to, one or two of them were not.

The point in regard to which most has been said against our present law, is the requirement of a jury trial in all cases before the patient can be committed to an asylum. Ever since the legislature of this State was induced to enact this, as applying the time honored and effectual means of guarding the liberty of the citizen in cases of alleged insanity as well as

* Read before the Chicago Medico-Legal Society Dec. 4, 1886.

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in other emergencies where it was threatened, it has been felt by those who have been observant of the workings of the law and who have had the welfare of the insane at heart, that its effect was in general far more injurious than could be compensated for by any of its supposed advantages. Some of the objections to the law were stated within a very few years at the most, after its enactment by a committee of one of the medical societies which reported on the matter, and its repeal has been agitated at each session of the legislature since 1878. The objections have been so well stated so many times that I need give them only a passing notice here. They are, in brief, the dangerous delays that it often involves, the publicity, which is in many cases a very serious wound to the feelings of friends of the insane which are often as much to be considered as the rights of the unfortunates themselves, the fallibility of juries, constituted as they frequently are, and the necessary briefness and imperfection of the examination in such a method of commitment. If the jury trial were only optional with the person alleged to be insane and his friends, and not invariably compulsory as it is, the objections to it would be removed and the rights of the individual far better preserved than at present. I could give instances that have come under my own observation where this law has acted as a direct premium on inhumanity to the insane person himself and every one interested in him, and other cases where, instead of protecting the individual, it has been the cause of very serious public danger. The objection, to some extent a sentimental one it is true, that it puts the unfortunate sufferer from insanity, as it were, in the position of a criminal is also worthy of consideration—it is not very uncommon to find verdicts of insanity endorsed "guilty" like a criminal verdict—and it is in the experience of every asylum officer to have observed the effect on the patients' delusions and sometimes also on their self respect by this course of procedure. While the law works worst in a large city like Chicago, where cases accumulate and where "insane day" in the County Court becomes a resort for amusement, if some

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newspaper reports are to be trusted, it also has its disadvantages in smaller communities, as I can testify personally. I need not, however, dwell on this point longer, if anything in our present lunacy laws is likely to be the object of attack it is this, and I have very strong hopes that the efforts for the abolition or modification of the present system of jury trial of the insane will be successful. The efforts for its repeal are not, it ought to be understood, at all in the interest of the officers of the State Asylums, for the present law is no inconvenience to them, but solely in the interests of humanity and common decency to which it is so often directly opposed.

The statutes are deficient in regard to the provisions for the discharge of patients. They provide for the discharge and return to the counties of unrestored patients; there is a general provision that when a patient is restored to reason he shall have the right to leave the hospital at any time, and if detained against his wishes he shall have the privilege of a writ of *habeas corpus*. There are also provisions for the legal removal of a conservator, but there are none for placing on record, in cases where no conservator has been appointed, the fact of the patient's restoration. It may have been thought advisable to leave the matter of discharge thus indefinite, but it is difficult to see the advantage in it. A verdict or commitment for insanity is not the same thing as a commitment for crime, though our law makes it painfully like it, it is not for a definite term and the reason for restraining the patient from his liberty ceases whenever he is fully or sufficiently restored. The statute, therefore, in this respect recites only what ought to be self-evident facts. It ought, I think, to do more, it ought to require the fact of the patient's recovery to be put on record in the files of the County Court, with the other records of his case. To declare legally a man insane takes away his rights to such an extent that it seems a great injustice not to have the law provide for his legal reinstallment. The question has come up so many times in a practical form, that I feel sure that this is one of the matters in which the law should be amended.

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The Attorney General of this State has given an opinion that when a patient has been discharged but not declared cured, that new legal proceedings for his recommitment are not necessary, due discretion being used, of course, in cases where a long period has elapsed since the discharge. There are very many patients in insane asylums which come to a certain point in their progress toward recovery when further asylum detention is not merely needless, but may be disastrous to them. To keep them would, perhaps, only tend to make their future more doubtful, but it is impossible to say that they are yet recovered. If removed they may, in course of time, become completely restored at home, but there will be no record on the hospital books of their recovery, and in case there is no property involved, no conservator to be displaced, there is no special legal provision for changing the record of their insanity I mention these cases for they exist, and sometimes they write to the hospital authorities for a certificate of recovery. The best that can be done for them is to state a belief in their recovery and that they will not be received again as patients without new papers. But I think a better way would be for the law to provide some simple method of correcting the record, either on the certificates of physicians or the examination by the judge himself to his own satisfaction, or some other way.

Another matter, and not an unimportant one, is that the law makes no provision for destitute patients that recover. When a convict is discharged from prison, a small amount of money is provided him in addition to his expenses home, so that he does not go altogether penniless, but when an insane pauper recovers and is discharged, there is no provision whatever. He is returned to the county from which he was received, but there is no arrangement whatever made for his subsistence till he can obtain help or work. In very few of the other States is there so little legal provision for the discharge of the insane who may recover, as in Illinois, and in this our laws seem lamentably defective.

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Most of the amendments I have so far mentioned as needed were provided in the bill introduced at the last session of the legislature already referred to. The next matter is one that affects the criminal code as well as the lunacy statute, and is in some respects the most important of all. I refer to the criminal insane.. At present there is no distinction made as regards their case in the law from that of the innocent unfortunates who are compelled to live and associate with them in the hospitals. There is a certain hardship in this which it seems ought not to be compulsory. Insanity does not improve one's morals, though it relieves from legal responsibility, and an insane convict, is not necessarily rendered any better by his insanity. He may be all the more unfitted by it for care in an ordinary asylum which has not the security of a penitentiary, nor are the ordinary insane insensible to their surroundings, and some of them are capable of feeling very deeply any degrading associations that are forced upon them. In Michigan and New York they have special asylums for the criminal insane, but so far as I am aware, no other state has made like provision. In one or two the law requires insane convicts to be kept and treated at the penitentiary, but in the great majority of the States, they are sent to the ordinary hospitals with special directions that they are to be treated the same as the ordinary insane.

When the subject of a special asylum for the criminal insane was agitated in this State a few years ago, the idea seemed to be held by many that only insane convicts were meant. This ought not to be the case, though there are probably enough of them to make a beginning. There are probably thirty or more convicts in the state hospitals, and the number would be larger were it not for the fact that a criminal education includes very often the art of easily getting out of so imperfectly guarded a place of restraint as an insane asylum. There are probably others still in the penitentiaries, for the prison physicians know the conditions in the hospitals, they are aware that convicts are not welcome there, and I read in

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the accounts of the prisons that they have there a class known as "cranks" who are not so decidedly insane as to call for their removal.

There is another class, however, of the criminal insane who form a rather larger percentage I think of the population of our insane asylum than do the convicts, who may also be classed among the criminal insane. I mean what are called in the hospitals, the *mittimus* cases, persons sent by the criminal courts who have escaped the punishment for crimes on the ground of insanity. Some of these belong as thoroughly to the criminal classes as any sane criminal, and some of them are ex-convicts. They are committed to the hospital to be there kept in safety until "fully and permanently recovered from such lunacy or insanity," a wording of the law which leaves a very indeterminate sort of discretion in the officials who have to judge as to the recovery. It is difficult enough often to be sure that any insane person has become fully restored, though this can be settled sufficiently for practical purposes, but who is sufficiently prophetic to be able to assure himself that any one has *permanently* recovered from a disease that is as little self protective—in fact, as much the very opposite of that—as any known to medical science. It would seem to me better that the discharge of these patients should be by the order of the court that committed them on the recommendation of the superintendent, and it is a question whether they ought not to be under some sort of surveillance even after discharge. In any case, it would be better for such cases to be committed to an asylum for the criminal insane, than to an ordinary one which is not by any means fitted to meet the condition prescribed by the law of keeping them safely.

There is still another class of the criminal insane, those who belong properly to the criminal class, but are committed by an ordinary verdict. Some of the most vicious and dangerous patients in asylums have escaped convictions for crime, though they may have deserved it. I have several examples in my mind, their lives at home had been thoroughly bad, and they

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were considered the most dangerous persons in the community, and they preserve their reputation in their life in the asylum. They are homicidal and dangerous to a degree, and it is one of the most serious questions the asylum authorities have to deal with, how to manage them. Sometimes these cases are ex-convicts and have pride in their criminal record, their insanity, such as it is, has only aggravated the case. The Michigan law makes provision for the transfer of these cases also to the criminal asylum by the order of the Governor on the recommendation of the Board of Charities and Corrections, and a similar provision should be in any law establishing a criminal insane asylum in any State. With this and the other two classes there is no question but there is ample material with which to populate an asylum for insane criminals in our state hospitals which would greatly welcome the relief.

In the foregoing I have briefly stated what appear to me to be the most important matters in which the laws of this State relating to lunatics need modifications. To sum up, the needed changes are: *First*, a change in the law relating to commitment so that the present jury trial can be optional with the patient or his friends for him and not compulsory, and in its stead in cases where it is not demanded, a less objectionable method of procedure, most probably a properly constituted commission appointed by the county court to examine and report, would meet the needs and be on the whole, a much more thorough and less inexpert method. *Second*, there should be a more definite regulation of the matter of discharge of recovered patients; so that there may be some legal record of the fact and there should be some better provision for the destitute insane when they recover than at present exists. Section 20 of the present lunacy statute, as worded, conflicts, apparently, with the criminal code and the law regarding insane convicts. It would also be well in the statute to have provision for the friends of patients unrecovered to remove them upon giving bonds for their proper care and safe-keeping. *Third*, there should be provision for insane criminals apart from the ordi-

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nary insane, including under this head not only insane convicts and those who escape conviction for crime on the ground of insanity, but also those of pronounced criminal tendencies amongst those committed by the ordinary methods whose presence is corrupting and dangerous in the state hospitals for the insane.

There are other deficiencies in our lunacy laws, perhaps of not less importance than those of which I have spoken that might be amended, such as provisions for asylum inspection, etc., but they have not come so practically before me as necessary in the course of my hospital duties. I hope that a measure similar to the one that failed to pass at last session will be introduced and successfully carried through this winter, and if possible, still another one providing for the separate care of the insane of the criminal class, may also be passed. There is a need of these measures, and our State should not allow the interests of its unfortunates to suffer by reason of its present imperfect legislation on this important subject.

Henry M. Bannister.

JUST as we go to press the following letter comes to hand. It is from Mr. Clark Bell, President of the New York Medico-Legal Society, and Editor of the Medico-Legal Journal:

MEDICO-LEGAL SOCIETY, OFFICE OF THE PRESIDENT, 57 BROADWAY.

NEW YORK, March 20, 1887.

Editor Medico-Legal Dept.:

My Dear Sir:—Please give me your idea of the best definition of insanity under our present knowledge of that subject. Also what, in your judgment, should be the legal test of criminal responsibility for acts committed by persons suffering from any form of mental disease. I am making a study of these topics and would feel greatly obliged for your views.

Very faithfully yours,

CLARK BELL.

To give a satisfactory definition of insanity is perhaps more difficult than to give a good legal definition of fraud. Both this question and the subsequent one require more consideration than the time at our disposal warrants. We should be glad to receive from any practitioner of law or medicine who has given attention to the subject matter of the above inquiries, an expression of opinion upon one or both questions. If any light is thereby thrown upon the subject we will publish the communications.

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EDITORIAL NOTES.

THE BAR OF CHICAGO.

TRIBUTE TO JUDGE ROGERS' MEMORY.

Judge Rogers' old court-room was crowded at the adjourned meeting of the bar held at 2 o'clock p. m., January 15, to receive the report of the committee on memorial and resolutions and listen to eulogies on the dead jurist. Judge Moran presided and Frank H. Collier acted as secretary. Judge Gwynn Garnett pronounced an eloquent eulogy on the life, character, and public services of Judge Rogers, and was followed by others.

The following memorial and resolutions were read by Judge Mason B. Loomis, the chairman of a committee consisting of Van H. Higgins, Sidney Smith, F. W. S. Brawley and J. R. Custer, and were unanimously adopted:

"Death loves a shining mark." Its dread shaft sought one of its brightest targets when, without a moment's warning—like lightning from a clear sky—it struck down one of Chicago's ablest jurists, John G. Rogers. Startling and painful was the announcement of his sudden death to the whole community; but more especially to his fellow-members of the bench and bar

Sorrowful at our great loss and grateful for his distinguished services, we, as members of the profession in which he was a conspicuous leader, have assembled to pay our just tribute to his memory.

Judge Rogers was pre-eminently a self-made man. He was born in Glasgow, Ky., Dec. 38, 1818; educated at Center College, graduating from the law department of Transylvania University, Lexington, Ky., at the age of twenty-one years. After practicing law in his native town for eighteen years, he removed to Chicago in 1857. Continuing his law practice here with eminent ability and success, he made himself master of his profession, and particularly excelled in his knowledge of the intricacies of real estate law. He was an eloquent speaker, a keen debater, a close reasoner, and an accurate pleader; added to which he had a remarkable memory, which furnished him with a rich fund of precedent and material for ready use on all occasions.

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In 1870, when three judges were added to the Circuit Court of Cook County under the new constitution, Judge Rogers was elected to the bench. He was re-elected in 1873, again in 1879, and the third time in 1885—without opposition, serving as chief justice of that court from 1879 to the time of his death.

And now that he has gone so suddenly beyond "that wall which separates us from the mystery of things beyond, and which we call life," we come, amid the emblems of mourning—in the very room where so recently he sat upon the bench so full of courtly grace and kindly dignity—to express our sorrow and to place on record that testimonial of our veneration and respect for him as a judge, a lawyer, a fellow citizen, and a friend, which is so deeply and indelibly graven upon our hearts.

As a judge his record is spotless. He was the soul and synonym or honor, observing its rules as sacredly as a true knight of the olden time. The purity of his motives, actions, and decisions was never questioned. With him corruption was impossible, for he was thoroughly incorruptible Ever conscientious, impartial, and fearless in the discharge of his official duties, he sought to do right, and only right, to his fellow men.

Rarely has it been the good fortune of any community to be represented upon the bench by one who "hath borne his faculties so meek, hath been so clear in his great office, so rich in all those qualities" that make the perfect magistrate and judge. As a private citizen his life was so pure, his habits so temperate, his disposition so genial, and his manner so engaging that all men were his friends; and his presence breathed a perfume of pleasure and happiness in his home and the social circles in which he moved. In all the relations of life he was a man of generous impulses, noble aims and lofty aspirations, and he has gone down to his grave in the ripeness of his years and in the midst of his usefulness with an untarnished name and with the highest admiration and esteem of all who knew him.

As fellow-members of the bar with the honored dead, we desire to show every mark of respect in our power for his worth and memory, and therefore request of the proper authorities that the court-room in which he so long presided continue to be draped in mourning for sixty days. We would also proffer to the widow and family of the deceased our heart-felt sympathies in their great loss; commending to them, as some little consolation, the record of the life of the good man who has gone from us; a life that was useful and distinguished, and in which the full measure of fruition crowned his career in all that makes up the sum of human experience, whether personal, domestic, civic, or official. Death has taken him from us, but it cannot take from us the remembrance, which we will all cherish, of the good deeds that filled up the measure of his life.

Resolved, That a copy of this memorial be presented to the widow and family of the deceased, and also to each court of record held in this city and county, to be spread upon the records of said courts; and that proper committees be appointed by the chairman of this meeting for the purpose of making such presentations.

The Inter-State Commerce Bill.

The principal features of this bill are: First, What is known as the long and short haul. Second, The prohibition of all rebates, drawbacks, and secret arrangements with shippers. Third, The prohibition of pooling.

The question of free passes comes under the second head. The law applies only to travel between the States, hence, any railroad corporation can issue any number of passes they see fit, provided only that they read "good between points within any certain State or Territory."

How the law will work and whether it will reform the abuses it was framed to reach, remains to be seen.

Published by E. B. Myers & Co., 132 Washington St., Chicago.

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THE QUESTION has been frequently asked whether, under the Constitution of Illinois, the Legislature can extend to women the right to vote at municipal elections. We should be pleased to receive expressions of opinion from members of the bar on this point.

MR. BONNEY has introduced a bill into the Legislature at the present session, having for its object the harmonizing of Capital and Labor. This is a knotty problem, and any one who can solve it will deserve the gratitude of his fellow men.

THE EQUITY CLUB.

On October 6, 1886, the lady students and graduates of the Law Department of the Michigan University, organized a society for the interchange of friendly counsel between women law students and practitioners throughout the United States. This is a worthy object, and it is hoped that the Equity Club may lead to a pleasant acquaintance among women whose aims are similar. For further information, address Martha K. Pearce, Cor. Secretary, 161 La Salle St., Chicago.

THE UNION COLLEGE OF LAW

wins distinction through Joseph W. Errant. During the year 1885-6, T. & J. W. Johnson & Co., law publishers, offered prizes to the graduating classes in twenty-two of the law schools of the United States for the best essay on some legal topic; the awards to be made under the direction of the faculty of each school.

The Union College of Law accepted the offer. The committee, consisting of Judge E. H. Bennett, of Boston Law School, and Professor William G. Hammond, of St. Louis Law School, was to determine which thesis was the best. They awarded the prize, "Smith's Leading Cases," to Joseph W. Errant, of Chicago, for his thesis on, "The Law Relating to Mercantile Agencies." We are pleased to learn that the Johnsons will publish this thesis. This college has scored another triumph in the appointment of Thomas Bradwell, as one of the Justices of the Peace for Chicago. His thorough acquaintance with the practical affairs of life and his high sense of wnat is right and just between man and man designate him the right man in the right place.

THE SOCIETY FOR POLITICAL EDUCATION.

This society was organized last fall by a number of the young men of Chicago who felt the need of a more general diffusion among the people, of political education. The society began by taking up the questions concerning municipal government. After a series of lectures and discussions on this subject, they determined to grapple with those great questions of the time, the industrial questions. This society should receive encouragement and assistance from every friend of progress and good government.

JOS. W. ERRANT, 5 and 6 Borden Block, Pres't.

JOHN M. CAMERON, 1. 2, and 3, 88 Washington St., Sec'y.

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NOTES OF FOREIGN TRAVEL. THE VATICAN.

Editor Law Times:

As St. Peter's is the largest cathedral in the world, so the Vatican is the largest palace in the world. It contains twenty-two courtyards and 11,000 rooms. Within its enclosures are chapels, halls, musea, library, etc., etc. But you must understand that a "chapel" is not necessarily, here a separate building. For instance, the cathedral has various projections in the interior, which are called "capellas" or chapels, each having an altar though they are not only connected with the church but all open in front, so as to constitute in fact but one room with the interior of the church itself.

The Vatican has been some 500 years building, and is scarcely finished yet, though I am inclined to think it has about got its growth. One of the newest constructions is a magnificent monument in the center of one of the squares, with a colossal statue of St. Peter. The monument and statue and everything connected with it is of the most beautiful marble. The same may be said of nearly everything in and about the Vatican. It has cut deep into a big marble quarry somewhere, and drawn heavily from others.

When the Italians took possession of Rome for the seat of government of Italy, in 1870, there was the same year a Bill of Guaranties passed, which leaves to the popes the undisputed possession of the Vatican, the Lateran, and Castle Gandolfo.

So these three palaces only are what are left to the pope, who formerly had dominion over the entire city. No wonder he is a little restive. But he must grin and bear it, for he will never get the city back, never, NEVER.

But there is no danger of his going to the poor house. The museum of antiquities in the Vatican, which is the largest and most valuable in the world, would sell at auction for five hundred millions or more (francs), and then he would have the galleries of paintings, library, etc., the Vatican itself, the two other palaces and the cathedral to fall back upon. Still he must heave a profound sigh when he goes into the Salo di Costantino, in one of his galleries and contemplates a splendid painting in which is represented Constantine presenting the city of Rome to Pope Silvester I., more than 1500 years ago.

As you enter the Vatican, you pass, at the door the Swiss guards, dressed like zouaves. They have guarded the palace for centuries. Not these men, but they and their Swiss ancestors. You must show them your permit. Then you ascend a broad flight of steps, of easy ascent, with majestic columns on each side.

Then you may go, when you get upstairs, wherever you have a mind to, within the domain specified in the permit. But it only covers the museum, the galleries, one or two chapels and the library. Some of these open out into some of the courts. There are more than 10,000 rooms that you cannot go into.

When you come back, you are expected to pay about ½ a franc gratuity

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at the door of whatever department you have been in. The amount is quite small, but by the time you have been through them all, it amounts to a very respectable entrance fee.

This you don't mind, as it is indisputably a very big show. The exterior architecture is not attractive. But within everything is fine, and in many places splendid.

The galleries of paintings are not so extensive as in some other places, but they contain many of the master-pieces of the great artists.

For instance, in the Capella Sistina is the "Last Judgment," a great painting in fresco by Michalangelo. It covers one side of a large room. It has, I presume, an exact likeness of God the Father, in the upper part; then, a little below he appears again in the form of God the Son, with the Virgin, his mother by his side. All around are patriarchs, prophets, and apostles, confessors and martyrs. Beneath are the archangels with the trumpets, awakening the dead. The elect are ascending to Paradise, withheld in vain by the demons and the rejected, who are hurled, without mercy, into the bottomless pit. On the right is death shrouded in a sheet.

In the lower regions is seen Minos, the judge, with the features of Biagio da Cesena. This was a man, who, being master of ceremonies to the Pope, had complained of the nakedness of the figures, declaring them indecent, and better fitted for a bath room than for a sacred building. To punish him for this interference as well for other annoyances Michaelangelo placed him in hell among the damned. Dante punished some of his enemies in a similar manner by putting them in hell in his celebrated poem, the "Inferno" or Divine comedy. In this case Biagio appealed to Pope Paul III., to have his likeness rubbed out. But the Pope declined to interfere. He told Biagio that if he had only been in purgatory he could have taken him out, but from hell there was no redemption.

While the great master-pieces of Machaelangelo are in the Capella Sistina, those of Raphael are in "Raphael's Stanze" or "The Rooms of Raphael."

Here you will be treated to another big dose of Madonnas and Holy Families, but as they are great paintings, executed by Raphael and his pupils and contemporaries, you can endure it this time very well.

You will find at least one painting of an entirely different character. It is the most interesting one I have ever seen. It is no doubt Raphael's master-piece. The original cartoon of it, which was drawn by Raphael, is in the Ambrosiana Library in Milan. Michaelangelo declared it to be the finest in the world.

The painting is called "The School of Athens." The scene is located in the Areopagus of Athens. The painting is in semi-circular form, about twenty-five feet high in the center, and by pacing I found it to be thirty feet long, that being the diameter of the semi-circle.

The central figures in the upper part are Plato, with his "Timaeus" in his hand, and Aristotle who has his "Ethics." They are engaged in discussion while philosophers are on both sides, in various attitudes listening

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attentively. They can, many of them be plainly distinguished, their features being true to life. In front, a little below, is Diogenes, reading a book, and turning his back scornfully on all of them. At one end is a group of astronomers, with globes and astronomical instruments. There are fifty-two persons represented, all full of life.

I gave two studies to this painting on successive days, and was so much interested in it that I resolved if I should ever be able to own a good painting I would have a copy of it made by a good artist; if I could get permission to copy. Probably that could be obtained.

The Museum of Antiquities is, as I have stated, the largest in the world. It consists principally of original ancient statuary, in marble, granite, terra cotta, bronze, etc., mostly in marble.

When you reflect that excavations have been going on and discoveries made for two or three hundred years, that until a late period they have been under the direction and control of the pope, and that as fast as statuary or other articles of importance were discovered, they were brought into the Vatican, you will realize the extent and value of this museum. Much also has been donated, and a good deal purchased. There is the original Laocoon, which Michaelangelo called "The Miracle of Art," and the original Meleager, which is so perfectly executed that the same great artist did not dare to undertake to restore a hand which was missing, lest he should mar the symmetry of the statue. And there is the original Torso of the Belvedere Hercules by the study of which he and Raphael perfected themselves in their profession. It was discovered at Campo de Fiori, under the ruins of Pompey's Theater. In the stone is cut the words in Greek, "Appollonius, the son of Nestor, Athenian, made this."

The number of statues is immense. In one room or hall are over seven hundred pieces of ancient sculpture, mostly statues. And there are a good many rooms. I wish you to tell Miss M—— that I have seen two or three statues of Julia Domna, concerning whom I wrote in the Record, (wife of the Emperor Septimius Severus), and she resembles her very much. To-morrow I am to visit the Castle of St. Angelo, which was built over 1900 years ago, finished 140 A. D. and is very well preserved.

C. B. WAITE.

FORT MADISON, IOWA.

Over four decades ago, General Pike selected this point as a military station, and in 1808 it was occupied as such.

The Indians, consisting of the Sacs, Foxes, Chippewas, Ottawas, Winnebagoes, Pottawatomies, and several other warlike tribes, about that time were leagued with England, during our second struggle with that country, and created the necessity of affording some means of protection to the then scattered trappers and pioneers living in this portion of the Mississippi Valley. In 1813 the garrison was reduced to such fearful extremities by the frequent and terrible assaults of Great Britain's "red" allies

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that old "Fort Madison" was abandoned by the troops, and destroyed by fire.

There is hardly any trace of this historical "Fort" now visible, unless it be an old well which was within its limits.

Some of our oldest settlers claim that the troops escaped through a tunnel extending from the "Fort" to the Mississippi river, and there in the quietest practicable manner, under the cover of night, took possession of the canoes of the Indians, and made a safe retreat from the besieging foe. The massive chimney of the "Fort Madison" remained standing for a great many years, causing the Indians to designate the place as "Potuomak" meaning thereby "Lone Chimney."

Up to the years 1835-6 various tribes of Indians seemed to hold almost undisputed sway over this portion of our grand commonwealth.

During the years 1835-6 a few Eastern, Southern and Middle-State families in search of fortunes and homes, pitched their tents here, amongst the savages, forests and blooming prairies, and against most fearful odds began to lay the corner-stone of this beautiful, charming and prosperous little city. The trials, struggles and privations incident to the settling and upbuilding of a new country can never be fully appreciated by those who have never had any experience in frontier life.

The city derives its name from said military fort, which was established about twenty rods from where the engineers of the Chicago, Santa Fe and California railway have located the abutments on the Iowa side of the great railway and wagon bridge soon to span the Father of Waters.

We glean the following statements from Judge Newhall's "Glimpses of Iowa in 1846" in relation to this city, to-wit:

"It is the seat of justice of Lee county, Iowa, and is beautifully situated on a curve in the west bank of the Mississippi, twenty miles below Burlington, and about twenty miles above the head of the Des Moines rapids. Its situation and appearance indicate a natural site for a city."

The first sale of lots took place in 1841, and since such period there has been a steady, healthy and vigorous growth.

The proposed extension of the Atchison, Topeka and Santa Fe Railway (under the corporate name of the Chicago, Santa Fe and California Railway) from Kansas city to Chicago, crossing the Mississippi river at Fort Madison, Iowa, has recently caused a widespread discussion of the merits and demerits of this city, and thus multitudes of strangers have been attracted to its borders.

During the year 1886, the C. B. & Q. alone hauled out of this station over seven thousand car loads of freight loaded here.

From the day of small things, and in less than a century, as shown by the last census, this city has grown and prospered until it is now the seat and center of one of the largest manufacturing interests in Iowa, and is the best paying freight shipping station in the State.

The bridge site is near the upper end of the city, while the splendid depot of the new railway will be central, and near the depot of the other three railway lines.

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The round house, shops, etc., will be built upon a seventy-six acre tract given to the Santa Fe by the city, and lying just west of the city limits in one of the additions. Fort Madison is equi-distant from Chicago and Kansas city, about 210 miles from each, and is to be a division centre of the new road. For five miles west of the city, the line of the C. B. & Q., and that of the Santa Fe run parallel, about one thousand feet apart, the ground being as level as can be desired, and a better place for all kinds of manufacturies cannot be had anywhere.

The new railroad and bridge prospects have given a boom to real estate and a great deal of property has already changed hands. A splendid growth of this city is already well assured.

THE law firm of Van Valkenburg and Hamilton, for many years a leading firm in Iowa, have added to their business a loan and real estate department. Mr. Van Valkenburg has been for the past two years Supreme Chancellor of the Knights of Pythias. He will now devote himself to business. Mr. Hamilton is the present mayor of Ft. Madison.

The A. T. & Santa Fe R. R. company, with their usual sagacity have appointed this firm attorneys for the new branch which they are building; the Chicago, Santa Fe and California, which runs southwest from Chicago, passing through Joliet, Streator and Galesburg, and crossing the Mississippi by a splendid double track and double wagon bridge at FORT MADISON, thence running southwest to Kansas City, thence to the Pacific.

WE call attention to the consolidation of two leading firms, Messrs. Barker & Thornton, and Messrs. Clifford & Smith under the firm name of Barker, Clifford, Thornton & Smith. They have ample room, and every facility for conducting every department of an extensive law practice. In so large a city it becomes almost a necessity to form such firms in order to systematize business and keep an eye on all the courts.

CATHARINE G. WAUGH, attorney at law, has removed her office to 107 East State street, Rockford, Ill.

BOOK REVIEWS.

THE INTER-STATE COMMERCE ACT: An analysis of its provisions. By John R. Don Passos, of the New York Bar. G. P. Putnam & Sons, 1887.

There has seldom been a law passed of more importance than the Inter-State Commerce Bill. It is intended to regulate if not control a private commercial business. For the past few years the Legislatures of the different States have encroached upon the prerogatives of railroad corporations. By one single act the Congress of the United States has sought to direct the business of railroad transportation throughout the United States. This is in the main an unprecedented action, and what its effect will be upon the railroad business, it is impossible to predict. For a thorough review of its provisions, and for a clear exposition of its aims, we refer our readers to the able book of Don Passos.

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OUR GOVERNMENT: By Jesse Macy, A. M. This work aims to give a clear view of all our governmental institutions, and their relations to one another. The style is remarkably fresh, simple and clear. It is of great importance that the citizens of any country should understand the government under which they live. This little book should be introduced into all our schools of learning, and could be very profitably studied by every citizen. Ginn & Company, Boston, 1886.

HISTORY OF WOMAN SUFFRAGE: edited by Elizabeth Cady Stanton, Susan B. Anthony, and Matilda Joslyn Gage. This is the 3d Vol. of a voluminous work, consisting of nearly 3,000 pages, and contains a large number of elegant steel portraits of prominent women.

One nas but to glance through its pages to see with what velocity this reform is now moving. Its earlier pages show with what difficulty the cause obtained even a respectful hearing. Its later pages show that in many States women are already voting, and everywhere the reform is making rapid progress. This history, handsomely bound in three royal octavo volumes of nearly one thousand pages each, with forty-two full-page engravings of eminent women, can be had, bound in cloth, for $5.00, per volume; in sheep for $6.00 per volume. Address Susan B. Anthony. Rochester, N. Y.

WOMAN'S LEGAL RIGHT TO THE BALLOT: an argument in support of By Francis Minor, of the St. Louis Bar. Reprinted from THE FORUM, December, 1886. Mr. Minor's proposition is, that in the United States and under the Federal Constitution, suffrage, whether for man or woman, is ar attribute of their federal citizenship; that it is one of the essential privileges of a citizen of the United States, inhering in the status or condition of such citizenship. In support of his proposition, Mr. Minor cites numerous authorities, which for want of space we cannot here reproduce. The argument is both interesting and able, and will repay perusal.

PERIODICALS RECEIVED.

The Journal of Jurisprudence and Scottish Law Magazine, Edinburgh.—The Legal Intelligencer, Philadelphia.—The Columbia Jurist, New York.—Lancaster Law Review, Lancaster.—Kansas Law Journal, Topeka.—The Legal News, Montreal.—The Canadian Law Times, Toronto.—Chicago Legal News, Chicago.—The Railway Age, Chicago.—The Boston Literary World, Boston.—The Union Signal, Chicago.—Voice of Masonry, Chicago.—The Open Court, Chicago.—Journal of Heredity, Chicago.—Woman's Journal, Boston.—The London Queen, London.—The Mahabharata, Calcutta.—The Knight's Sword and Helmet, Ft. Madison.—The Woman's Tribune, Beatrice.—The Guiding Star, Chicago.—The Woman's Standard, Des Moines.—Sandwich Argus, Sandwich.—Atlanta Weekly Journal, Atlanta.—The Illinois Work Shop, Chicago.—Free Thinkers' Magazine, Salamanca.—The Lever, Chicago.—Free Methodist, Chicago.—The Standard, Chicago.—The Advance, Chicago.

Meteorological Observations made at the CARSON OBSERVATORY, Carson City, Nevada, during the years 1883 and 1884 by CHARLES W. FRIEND.

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John Jay

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THE CHICAGO LAW TIMES.

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JOHN JAY.

John Jay, first Chief Justice of the United States, was born in the City of New York, on the 12th of December, 1745. He was the son of Peter and Mary Jay, and the eighth of ten children. His ancestors had chosen to abandon their country rather than their religion; his great grandfather, Pierre Jay, and also Augustus Jay, his grandfather, having on account of religious persecution, fled from Rochelle to England.

His mother's ancestors were also compelled by persecution to abandon their country, Bohemia, and seek refuge in Holland and afterward, in America.

His childhood was passed in the country, under the quiet but inspiriting influence of a close communion with nature.

There he was taught the rudiments of knowledge by his mother, and under her tuition, was prepared to enter a grammar school. As a child, he was remarked for his serious and studious disposition.

At eight years of age, he was sent to the grammar school at New Rochelle, a village but a few miles distant from Rye, where his parents resided. The inhabitants were mostly of French extraction, and spoke their native tongue, so that the lad had here an opportunity to become familiar with a language which was to be of such importance in his subsequent diplomatic career. At the age of eleven, he returned home, and was placed under the instruction of a private tutor, with whom he remained until prepared for college.

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In 1760, in his fifteenth year, he entered King's (now Columbia) College.

The details of his college life, though meagre, are highly honorable to him. He was studious and persevering. He was troubled with an indistinct articulation which finally, by incessant care and attention, he succeeded in overcoming. Other natural defects he cured, in a similar manner.

During the last year of his college course, having fixed upon the law as his future profession, he read, in the original, the immortal work of Grotius, *De Jure Belli et Pacis*. A few weeks before the close of his college life some of the students, as an act of mischief, broke a table in the college hall. Young Jay, though not one of the parties, witnessed the proceeding. He admitted, when summoned before the faculty, that he knew the perpetrators, but refused to disclose their names. For this refusal he was suspended. At the expiration of the sentence he returned, and received the degree of Bachelor of Arts, on the 15th of May, 1764, when he was nineteen years of age.

Two weeks after leaving college, we find him installed in the office of Benjamin Kissam, Esq., as a law student. Mr. Kissam was a warm hearted, genial man, and accorded to his young friend his full friendship and sympathy.

In 1768, Jay was admitted to the bar, and formed a partnership with Robert R. Livingston, who was afterward, for twenty-four years Chancellor of New York. He obtained a respectable share of business from the first; and the second year after his admission, Mr. Kissam requested him to take charge of his cases. His active professional life continued only six years.

About the 1st of May, 1774, he was married to Miss Sally Livingston, daughter of William Livingston, Esq., of Elizabethtown, East Jersey. Mr. Livingston had now retired from the bar, and had fixed his residence in New Jersey, in the affairs of which State he was destined to act a conspicuous part.

At the same time Jay entered upon his political career. The American Revolution was now in active progress.—The Boston Port Bill became a law on the 31st of March, 1774. Intense excitement everywhere prevailed. Mr. Jay was on

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the popular side, but was opposed to precipitate action. He was eminently a man of prudence and caution. He was slow to adopt aggressive measures, but immovably firm when any step had been taken. The citizens of New York held a meeting and appointed a committee of fifty-one, to correspond with the colonies in all matters of moment. Mr. Jay was on the committee. A small majority of the committee was in favor of moderate measures, and Jay was of the majority. He gradually advanced, however, with the current of opinion, and finally took his position among the most resolute of those opposed to the ministry.

On the 4th of July, 1774, the committee met and nominated Philip Livingston, John Alsop, Isaac Low, James Duane and John Jay, to represent New York in a General Congress. After an exciting contest, and the appointment of various confusing committees, these gentlemen were finally elected members of the Congress.

The Congress of 1774 met on Monday, the 5th of September, in Philadelphia. The proceedings of this Congress, in which Mr. Jay, who was then only twenty-nine years old, took an active part, have gone into the history of the country. On the 11th of October, Mr. Lee, Mr. Jay and Mr. Livingston were appointed a committee to prepare the draft of a memorial to the people of British America, and an address to the people of Great Britain. The preparation of the latter was entrusted to Mr. Jay. He brought the whole force of his mind to the composition of that paper, which has since attracted great attention. After some amendment, it was approved and adopted.

May 13, 1775, he took his seat in the second Congress. During this session he prepared a letter to the inhabitants of Canada, which was written in a style not unworthy the pen that wrote the address to the people of Great Britain. During the same session, also, he wrote an address to the people of Ireland, and a declaration to be published by General Washington, upon his arrival at the camp before Boston.

On the 25th of May, 1776, Mr. Jay took his seat as a member of the Provincial Congress of his own State. His inclina-

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tion to serve his State rather than the nation, was shown, not only on this occasion, but subsequently, when he left the Supreme Bench of the United States, in order to become Governor of New York.

The Declaration of Independence having been reported to the Continental Congress on the 28th of June, on the 2d of July the New York delegates wrote a pressing letter, asking instructions how to vote on the question of independence. There not being time to receive an answer to this letter, the New York delegates said, they were for the declaration themselves, and were assured their constitutents were for it; but as they had no authority to act upon the question, they asked to be excused from voting; which request was granted.

The New York delegates enclosed a draft of the declaration to the Provincial Congress. It was received and read on the day Congress assembled. It was immediately referred to a committee of which Mr. Jay was a member. Mr. Jay drafted several resolutions which were immediately adopted. The first declared that the reasons assigned by the Continental Congress for declaring the united colonies free and independent States, were cogent and conclusive; and while they lamented the cruel necessity which rendered that measure unavoidable, they approved the same, and would, at the risk of their lives and fortunes, join with the other colonies in supporting it.

Thus Mr. Jay, though he had not the honor of affixing his name to the Declaration of Independence, seized the first opportunity to give it his sanction.

The war was now fairly commenced. Two British ships had sailed up the Hudson River. Mr. Jay and five others were appointed a secret committee to devise and carry into execution such measures as to them should appear most effectual for obstructing the channel of the river, or annoying the enemy's ships. The duties of the committee were arduous, and 5,000 pounds sterling were appropriated to defray the expenses.

Mr. Jay did not resume his seat in the Provincial Congress until after the ships returned down the river, on the 18th day of August. He continued to perform valuable services to his State, many of which were of a military character.

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Now came a gloomy aspect in military affairs. A large and well appointed army of the enemy had possession of New York City. The State was threatened with a formidable invasion on its Northern frontier, and many of the tories were emboldened, also to take up arms. Calm and inflexible, Mr. Jay stood unmoved amid all the violence of the storm, discharging his duties to the Commonwealth with unsurpassed fidelity. Rigorous measures were taken against the tories, and these he uniformly advocated and supported.

To arouse the inhabitants from the gloom and despondency into which they had sunk, the Convention of New York, on the 23d of December, published an address to their constituents. It was drawn by Mr. Jay and is one of the most admirable papers from his pen. Congress earnestly recommended it to the serious perusal and attention of the inhabitants of the United States, and ordered it to be translated and printed in the German language, at the expense of the country.

On the 15th of October, it was ordered by the Convention that Mr. Jay have leave of absence, to assist in removing his aged parents, with their effects, out of danger of the enemy. He repaired to Rye, and succeeded in removing them to Fishkill, where his excellent mother died early in the following year. The family estate at Rye soon after fell into the hands of the enemy, and was not regained until after the war. These various employments and responsibilities prevented him for two years from returning to the Continental Congress, in which he appears still to have been entitled to a seat.

In 1776-7, Mr. Jay, as a member of the Constitutional Convention, took an active part in framing the Constitution of New York. He and his coadjutors happily succeeded in reconciling the discordant sentiments of individuals, and in satisfying the demands of the time. Mr. Adams pronounced it the best constitution that had yet been framed. As finally adopted, it was chiefly the work of Mr. Jay.

He was an advocate of gradual emancipation, and strenuously urged the insertion of an article in the Constitution, recommending the future Legislature of the State to take effectual measures for abolishing domestic slavery, as soon as it

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could be done consistently with public safety and the rights of private property, "so that in future ages every human being who breathes the air of this State, shall enjoy the privileges of a freeman." But the proposition, although supported by some of the most eminent members of the Convention, was not adopted.

The Constitution was adopted on the 20th of April, 1778. A Council of Safety was chosen, clothed with all the powers requisite for the safety and preservation of the State, until a Governor and Legislature should be duly chosen and ready to act. Mr. Jay was a member of this Council of Safety. As a member of the committee he took an active part in various military operations.

Before the Convention was dissolved, they appointed Mr. Jay Chief Justice of the State, until the Legislature should meet and the Constitutional power of appointment be brought into operation. When the Legislature met, he was duly re-appointed Chief Justice of the State, under the Constitution. This office he held until September, 1779.

On the 7th of December, 1778, though still holding the office of Chief Justice of the State, he took his seat in the Congress. On the 10th of the same month he was chosen speaker. Vermont, taking advantage of the revolutionary contest, had withdrawn from the jurisdiction of New Hampshire and New York. This had occasioned much excitement, and the Legislature had declared that a special occasion existed when the Chancellor and Judges of the Supreme Court might be elected delegates to the General Congress. Mr. Jay's correspondence with Washington during the period while he was presiding in Congress, was of a confidential and interesting character, and served to confirm those sentiments of respect and esteem which they already entertained for each other.

On the 27th of September, 1779, Mr. Jay was chosen minister plenipotentiary to Spain. His mission had a twofold object; first, to form treaties with Spain, analogous to those with France, and secondly, to obtain a loan of five millions of dollars. Soon after he had left the United States, Congress, anticipating the loan, drew drafts on Mr. Jay, at six months

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sight, amounting in the aggregate to half a million dollars. This action of Congress caused Mr. Jay considerable embarrassment; his anxiety to have the drafts paid leaving him to a certain extent at the mercy of the Spanish Government, in conducting the negotiations, both for the treaty and the loan. Nothing could more forcibly illustrate the straits to which our struggling government had been reduced, than the drawing of these drafts.

On the 15th of February, 1781, a resolution was passed by Congress, instructing Mr. Jay to yield the navigation of the Mississippi, provided it should be unalterably insisted upon by Spain. To such a humiliating condition was this country then reduced. Notwithstanding this concession, Mr. Jay did not succeed in negotiating a treaty, nor in securing a satisfactory loan. Franklin, who was in Paris, aided him in getting the accepted drafts paid.

In 1779, Mr. Adams was appointed as sole minister plenipotentiary for peace, and to make a treaty of commerce, also, with Great Britain. In 1781, Congress associated with Mr. Adams in the commission for peace, Mr. Jay, Mr. Franklin, Mr. Laurens and Mr. Jefferson. Mr. Jay arrived at Paris the 23rd of June 1782. The others being absent, the negotiations fell at first upon Jay and Franklin. When the other commissioners had arrived, the negotiations were conducted with varied success until the 3rd of September, 1783, when provisional articles of peace were signed at Paris, which virtually ended the American Revolution.

In July, 1784, Jay returned to his native land. On his arrival at New York, he learned that Congress had appointed him Secretary for Foreign Affairs.

Negotiations were again opened with Spain, and were now of an exciting character, this country insisting upon the free navigation of the Mississippi; a point which had constantly been in the way of concluding a treaty. Jay was at first given full power to conclude a treaty, but afterward this extensive grant of authority was repealed, and he was instructed "to stipulate the right of the United States to their territorial bounds, and the free navigation of the Mississippi from the

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source to the ocean, as established in their treaties with Great Britain." Under these instructions he was not able to bring the negotiations to a satisfactory conclusion.

Mr. Jay, as Secretary of Foreign Affairs, was more successful in a treaty with Great Britain, which was approved by Congress.

He was not a member of the Convention which formed the Federal Constitution, but his influence was felt in the framing of that document.

After the formation of the new Government, Washington had given Jay his choice of the offices under the Government. He preferred the Chief Justiceship, as according with his turn of mind, his education and habits. He was therefore nominated for that position, and confirmed by the Senate the 26th of September, 1789.

The first term of the Supreme Court was held at New York, in February, 1790. Several rules were established, and the Court adjourned. It does not appear that any business was brought before them until the August term of the following year. In the meantime, however, Circuit Courts were held twice a year, agreeably to the provisions of the Judiciary bill. Jay's district embraced New York and New England. His first Circuit Court was held in the City of New York, on the 4th of April, 1790. On the adjournment of this Court, the Chief Justice commenced his first Circuit through New England. He had received various invitations from his friends to reside with them while holding his courts, but he thought propriety required that he should decline them all, and lodge only at public houses. He was everywhere honored with public and private civilities, and Harvard University conferred on him the degree of Doctor of Laws.

Perhaps the most important case decided while he occupied the Supreme bench, was *Chisholm, Ex'r. v. Georgia*, in which it was held that a State could be sued by individual citizens of another State. This decision caused some alarm and resulted in the adoption of the 11th Amendment to the Constitution of the United States.

While the Chief Justice was at Philadelphia, holding the

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April session, 1794, of the Circuit Court, he was nominated and confirmed as envoy extraordinary to England. Without vacating his seat on the bench, he went to England, negotiated the treaty which has since borne his name, and returned to this country in the spring of the following year. Having in the meantime been elected Governor of New York, he resigned the Chief Justiceship, and thus closed his judicial career.

The treaty with England, commonly called "Jay's Treaty" was the subject of a bitter controversy, but the good faith of the Chief Justice in conducting the negotiations was never impeached.

While still Governor of his State, in the year 1800, he was again nominated and confirmed as Chief Justice of the United States. But this appointment he at once declined, having now fully determined to retire to private life. This resolve he carried into execution the following year.

He was now fifty-six years of age. He passed his retirement in that quiet which he had long desired. "Had Mrs. Jay remained with me," he wrote, "I should deem this the most agreeable part of my life." He was living on his estate at Bedford, Westchester County, New York, when he died, of palsy, May 17, 1829, at the advanced age of eighty-four.

Thus ended the eventful life of this remarkable man; a life so interwoven with public affairs, that offices came to him in such quick succession, as to be constantly lapping over, one upon another. He had not the broad philanthropy and comprehensive knowledge of Franklin, the keen analytical power of Payne, the clearness and depth of thought of Adams, of Hamilton, of Madison or of Jefferson, or the judicial discrimination of Marshall; but he had, to a limited extent, all these qualities, combined with the faculty of adapting himself to the exigencies of the times. He was, moreover, a man of unimpeachable integrity of character. Though he could not be considered a brilliant man, his was one of the most brilliant careers recorded in political history.*

*In the compilation of the foregoing article we are largely indebted to Flanders' Lives and Times of the Chief Justices of the United States.

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INTERNATIONAL COPYRIGHT UNION.*

From an English point of view, International Copyright is divided by a sharp geographical line into the two continents of Europe and America.

With South America we have at present no Copyright Conventions, nor have any South American States as yet signed the International Convention, although it is highly desirable that they should do so. The great English-speaking Republic of the North has, however, for the parent State an importance in regard to this question which probably exceeds that attaching to all the rest of the world put together.

In Great Britain the compactness of the market and the density of population favors the system of circulating libraries; the consequence being that individual purchasers of books are few, and first editions, designed to supply a limited demand, are for the most part of an expensive character.

The book-market of the United States differs entirely from that of Great Britain, the extended area and sparse population rendering circulating libraries on any large scale out of the question. The system, therefore, is one of individual purchases of cheap editions.

As an instance of the price at which British works are produced in the United States, it may be mentioned that Justin M'Carthy's *History of our own Times*, first published in England at about £2, 12s. 6d., was issued in an excellently readable American reprint for 1s. 8d.

The Revised Statutes of the United States, in twenty-three admirably clear and concise sections, grant copyright to "any

* Extracts from an article in "The Journal of Jurisprudence and Scottish Law Magazine," for April, 1887.

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citizen of the United States or resident therein" for any species of work susceptible of being copyrighted, on the following conditions. Copyright endures for the space of twenty-eight years from the time of recording the title, which must be done before publication. A further term of fourteen years is granted to the author, or his widow or children, on recording the title a second time. Copyright includes the sole right to print, to dramatize, or to translate. Copies of literary and musical works, and photographs of works of art, must be deposited in the Congressional Library within a given time. Copyrights are assignable at law. But section 4971, the last of the chapter on Copyright, enacts:

"Nothing in this chapter shall be construed to prohibit the printing, publishing, importation, or sale of any book, map, chart, dramatic or musical composition, print, cut, engraving, or photograph, written, composed. or made by any person not a citizen of the United States nor resident therein."

Under these conditions it is not surprising that the record of diplomatic negotiations for an International Copyright Convention between the two countries is one of monotonous failure. Great Britain has little direct inducement to offer, since under existing English law first publication by an American author in the United Kingdom, or simultaneous publication therein and in the United States, gives title to copyright throughout the British Empire.

Such negotiations have taken place from time to time. A Draft Convention was proposed to the United States some twenty years ago, but not being found acceptable the negotiations came to an end in 1870, and from that date the question appears to have slept until 1879, when an amended version of the British Draft, put forward by Messrs. Harper, was under the consideration of the two governments. The negotiations then pending, were, however, postponed.

More recently, in 1881-2, communications have passed between the two Governments on the initiative of Mr. J. R. Lowell, then United States Minister in England, and one or two Draft Conventions have been under consideration, but so far the United States Government do not appear to have felt

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themselves able to proceed towards any definite result.

In all these negotiations, the United States Government have treated the question from a practically protective point of view, and have insisted, as the basis of any Convention, on the condition that the works of aliens, in order to acquire protection, must be reprinted in America.

Although opposed in principle to the condition of reprinting, the British Government have been willing to agree to it rather than forego the benefits of an international arrangement, but even so no real progress has been made.

Lately, however, the United States minister at Berne was appointed to attend the International Conferences, and declared the sympathy of his Government for the substance and aims of the International Convention; and it is not too much to say that the attitude of Mr. Boyd Winchester, the American Delegate to the International Conference at Berne, gives real promise that this disposition will ere long lead to practical and satisfactory results.

Several Bills have recently been introduced in the United States by Mr. Dorsheimer, Mr. Chace, Mr. Hawley, and others, with the object of repealing section 4971 of the Revised Statutes, and of making general provision for securing copyright to aliens; but all these, with the exception of Mr. Hawley's Bill, retain the objectional feature of compulsory manufacture in the United States; and even Mr. Hawley's Bill, as well as the others, would not completely meet the provisions of the Berne Convention, inasmuch as they leave unrepealed the principle of deposit and registration of foreign works in the Congressional Library, whilst the International Convention declares that copyright shall be secured by the mere fact of fulfilling the conditions, whatever they may be, required by law to establish title to copyright in the country of origin of the work.

Even supposing, however, that the United States do not find themselves in a position to adhere strictly to the Bernese Convention, it is possible that the recent International Copyright Act, 49 and 50 Vict. c. 33, may facilitate negotiations for a Convention between Great Britain and the United States.

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THE PRESIDENT'S VETOES.

Section 7 of Article 1 of the Federal Constitution provides:

"Every bill which shall have passed the House of Representatives and the "Senate, shall, before it becomes a law, be presented to the President of "the United States; if he approve he shall sign it; but if not, he shall re- "turn it, with his objections, to that house in which it shall have originated, "who shall enter the objections at large on their journal, and proceed to "reconsider it. If, after such reconsideration, two-thirds of that house, "shall agree to pass the bill, it shall be sent, together with the objections, "to the other house, by which it shall likewise be reconsidered, and if ap- "proved by two-thirds of that house, it shall become a law. But in all "such cases the votes of both houses shall be determined by yeas and nays; "and the names of the persons voting for and against the bill, shall be "entered on the journal of each house respectively."

The first draft of the Constitution required every bill to be presented to the President "for his revision. If upon such re- "vision he approve of it, he shall signify his approbation by "signing it. But if upon such revision, it shall appear to him "improper for being passed into a law, he shall return it," etc.

The meaning is the same, executive interposition is invited in every case when, in the President's judgment, the bill is improper to be passed into a law.

It was designed by the qualified negative to secure a reconsideration of its action by the legislative body, and by requiring a record of the yeas and nays to compel that action to be had under a due sense of responsibility. In all other cases the yeas and nays need not be taken unless called for by one-fifth of the members present, and the consequence is much legislation, which does not receive the attention members would give to it if obliged to justify recorded votes or absences.

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Benjamin Franklin observed in 1769,

"A single man may be afraid or ashamed of doing injustice. A body "is never either one or the other if it is strong enough; it cannot appre- "hend assassination, and by dividing the shame among them, it is so little "apiece that no one minds it."

Hamilton, in No. 73 of the Federalist, speaks of the qualified negative as required in order to enable the executive to defend himself against the depredations of the legislative department, and also as furnishing an additional security "against "the enactment of improper laws," and "the effects of faction, "precipitancy or of any impulse unfriendly to the public good "which may happen to influence a majority of" Congress. He says,

"The propriety of the thing does not turn upon the supposition "of superior wisdom or virtue in the executive, but upon the supposi- "tion that the legislative will not be infallible; that the love of power "may sometimes betray it into a disposition to encroach upon the rights "of the other members of the government; that a spirit of faction may "sometimes pervert its deliberations; that impressions of the moment may "sometimes carry it into measures which itself, on mature reflection, would "condemn."

And he considers it far less probable that all parts of the government should entertain erroneous views at the same moment, on the same subject, than that such views should by turns mislead every one of them. And further, he considers

"Every institution calculated to restrain the excess of law making, and "to keep things in the same state in which they may happen to be at any "given period, as much more likely to do good than harm, because it is "favorable to greater stability in the system of legislation. The injury "which may possibly be done by defeating a few good laws would be am- "ply compensated by the advantage of preventing a number of bad ones."

He thinks that there is greater danger of the power not being used when necessary than of its being used too often or too much.

"In a case in which the public good was evidently and palpably sacri- "ficed, a man of tolerable firmness * * * would listen to the ad- "monitions of duty and responsibility, * * * stimulated by the "probability of the sanction of his constitutents. * * * I speak now "with an eye to a magistrate possessing only a common share of firmness. "There are men who, under any circumstances, will have the courage to do "their duty at every hazard."

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And, speaking of the absolute and a qualified negative, he adds: "In proportion as it would be less apt to "offend, it would be more apt to be exercised; and for this "very reason it may, in practice, be found more effectual."

Mr. Justice Story, in his Commentaries on the Constitution, declares that the President's negative is more wisely digested than the absolute negative vested in the English crown, the peremptory veto of the Roman tribunes and the negative of the French constitution of 1791, "on which the philosophers "and statesmen of France exhausted all their ingenuity." He agrees with Hamilton that it furnishes "security against "the enactment of rash, immature and improper laws," and "establishes a salutary check upon the legislative body, calcu- "lated to preserve the community against the effects of faction, "precipitancy, unconstitutional legislation and temporary ex- "citements, as well as political hostility." He contends that from the difference in the election and duties of the executive, the love of power, the spirit of faction, political impulse or persuasive local or sectional influence, which may affect the legislature, may not reach him at all, or not in the same degree.

That "he will have an opportunity soberly to examine the acts and reso- "lutions passed by the legislature, not having partaken of the feelings or "combinations which have procured their passage, and thus correct what "shall sometimes be wrong from haste and inadvertence, as well as design. "His view of them, if not more wise or more elevated, will at least be in- "dependent, and under an entirely different responsibility to the nation, "from what belongs to them. He is the representative of the whole nation "in the aggregate; they are the representatives only of distinct parts; and "sometimes of little more than sectional or local interests."

He concurs that "the real danger is that the executive will "use the power too rarely," and when he does do it, "it "will be a solemn appeal to the people themselves from their "own representatives."

He commends it as having the character of a request to the legislature itself, that it should revise its own judgment. "It is in the nature, then, merely of a rehearing, or a recon- "sideration," involving nothing "to provoke resentment or "rouse pride." If his reasons are satisfactory to the legislature, he would have the support of a respectable portion

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of that body; if not, "his observations would be calculated to "excite public attention and discussion, to lay bare the grounds and policy, "and constitutionality of measures, and to create a continued watchfulness "as to the practical effect of the laws thus passed, so that it might be as- "certained by experience whether his sagacity and judgment were safer "than that of the legislature."

The absolute negative of the English crown has not been exercised since 1692, but Mr. Story says the whole structure of our government is so entirely different that no argument to assist us can be drawn from the practice of the latter. In his letter to the sheriffs of Bristol, Mr. Burke wrote: "Its repose "may be the preservation of its existence; and its existence "may be the means of saving the constitution itself, on an oc- "casion worthy of bringing it forth."

Until 1830 there were but nine vetoes; two by Washington, none by Adams, none by Jefferson, six by Madison, and one by Monroe. Jackson exercised the veto nine times, besides pocketing several bills, presented just prior to the final adjournment. The whigs, furious at his conduct in this last regard, undertook to say that the adjournment referred to in the constitution, which *prevented* action by the President and so enabled him to defeat a bill without taking any, could not be the final adjournment fixed by law. But that view never seemed to obtain any support after their particular indignation had died away.

When Jackson vetoed the bill to renew the charter of the United States Bank, Mr. Clay in vehemently attacking it, discredited the use of the power, denounced it as of monarchial origin, and contended that the veto was hardly reconcilable with the genius of representative government, and totally irreconcilable with it if to be frequently employed in respect to the expediency of measures, as well as their constitutionality; while on the other hand, Mr. Benton vindicated the use and origin of the veto as intended for the benefit of the people and having the effect to refer a measure to the people for their consideration and to stay its execution until they could pass upon it, and adopt or reject it at an ensuing Congress.

Tyler vetoed six bills, and had a very stormy time. Upon

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his return of the tariff bill without his approval, the whig house instead of proceeding to reconsider, referred it to a select committee of thirteen, on motion of John Quincy Adams, who subsequently presented a fiery report on the subject, concluding with a resolution for amending the Constitution by substituting a majority for two-thirds as necessary to pass a bill over the veto. Two minority reports were presented, and the one made by Messrs. Ingersoll, of Pennsylvania, and Roosevelt, of New York, contains the following:

"There is no veto, as is too often supposed, either in the word or the "spirit of the Constitution, but mere authority for executive reference to "legislative reconsideration. Unfounded resemblance has been ignorantly "supposed between this American provision for deliberation to prevent "errors of passion and precipitancy, and the absolute inhibition of the "Roman or the modern royal veto. There is no resemblance whatever be- "tween them. They are as unlike as free and absolute government; as un- "like as the Polish veto, which allowed every member of a single branch "legislature, without reason, to repudiate any of its proceedings by his "single and solitary voice. Equally unfounded is it to suppose (as ignor- "ance of their operations frequently does) that the monarchs of France and "England are not absolute enough to use the veto. They use it every day; "one of them, in the exclusive right of initiating all legislation, and both "of them by the vaster means of executive influence."

This tempest soon blew over, and to-day all will agree with Mr. Theodore Roosevelt in his recent biography of Benton that the veto power "is among the best features of our government."

Polk vetoed three and Pierce nine bills; Buchanan, Lincoln and Grant but few, one of President Grant's two vetoes being of a bill to increase the amount of "greenbacks" to $400,000,000 and authorize the issue of $46,000,000 in national bank notes; Johnson, in his controversy with Congress, a great many. And so of President Hayes, when it was attempted to repeal general legislation by riders on appropriation bills, though his most important veto was of the silver bill of 1878. President Arthur exercised the power but rarely.

It has devolved upon the present incumbent of the presidential office to exercise the veto power in more instances than all the other Presidents put together; a clear indication of the increase in legislation and in carelessness in the enactment of special laws, requiring greater care in examination and the

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application of closer business scrutiny, as well, doubtless, of a different view of the functions of government than that indulged in by some of the leading politicians in the period just preceding Mr. Cleveland's inauguration.

President Cleveland's vetoes certainly demonstrate that he possesses the courage to do his duty at every hazard, as referred to by Mr. Hamilton, and it is impossible to over-estimate their salutary influence in strengthening the moral fibre of the people.

The inquiry is an interesting one as to the general grounds upon which the President's action is based. His view in taking office seems to have been that free institutions are inconsistent with a paternal government; that governmental administration is a business matter to be carried forward on business principles; that it is the duty of the executive to examine all bills presented to him for his approval, and to require a reconsideration of those which he thinks improper to be passed into laws. There is not a particle of doubt that it was the intention of the framers of the Constitution, and of those who adopted it, that this should be the attitude of the executive in relation to the enactment of laws; and it is clear that the danger was that the power would be exercised too little, rather than too often or too much. It is vastly easier to say yes than no; to yield to importunity rather than resist it.

By giving some extracts from these messages the necessity for executive interposition and the admirable and instructive way in which that interposition has been exerted, will be most forcibly presented.

Take the numerous bills making appropriations for the erection of public buildings in various parts of the country, for instance. The President thinks such bills should not become laws unless an actual necessity for the proposed erections exists.

Thus, on the 19th of June, in vetoing such a bill, the President says:

"The public buildings now in process of construction, numbering eighty, involving constant supervision, are all the building projects which the government ought to have on hand at one time, unless a very palpable necessity exists for an increase in number. The multiplication of these structures involves not only the appropriations made for their completion

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but great expense in their care and preservation thereafter. While a fine government building is a desirable ornament to any town or city, and while the securing of an appropriation therefor is often considered as an illustration of zeal and activity in the interests of a constituency, I am of the opinion that the expenditure of public money for such a purpose should depend upon the necessity of such a building for public uses."

So, in his message of February 26, 1887, requiring reconsideration of a public building bill, he writes, necessity and public need "alone justify the expenditure of public funds for such a purpose." And adds:

"The care and protection which the government owes to the people do not embrace the grant of public buildings to decorate thriving and prosperous cities and villages, nor should such buildings be erected upon any principle of fair distribution among localities. The government is not an almoner of gifts among the people, but an instrumentality by which the people's affairs should be conducted upon business principles, regulated by the public needs."

This accurately describes the President's views as to the true scope of government by and for the people.

In February a bill was passed "to enable the Commissioner "of Agriculture to make a special distribution of seeds in the "drouth stricken counties of Texas, and making an appropria-"tion therefor." The President says:

"I feel obliged to withhold my approval of the plan proposed by this bill to indulge a benevolent and charitable sentiment through the appropriation of public funds for that purpose. I can find no warrant for such an appropriation in the Constitution, and I do not believe that the power and duty of the general government ought to be extended to the relief of individual suffering which is in no manner related to the public service or benefit. A prevalent tendency to disregard the limited mission of this power and duty should, I think, be steadfastly resisted, to the end that the lesson should be constantly enforced that though the people support the government, the government should not support the people. The friendliness and charity of our countrymen can always be relied upon to relieve their fellow-citizens in misfortune. This has been repeatedly and quite lately demonstrated. Federal aid in such cases encourages the expectation of paternal care on the part of the government, and weakens the sturdiness of our national character, while it prevents the indulgence among our people of the kindly sentiment and conduct which strengthens the bond of a common brotherhood.

This is in strict accordance with the American creed, which declares belief in the ability of the people to govern them-

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selves, and in which therefore paternalism has no place. To adopt the theory that government should support the people is to substitute the bread and circus of the decadence of the Roman power, for the honest self-reliance, and self-respecting dignity of the American citizen.

No better illustrations of the reprehensible carelessness of congressional legislation, of the wastefulness engendered by the assumption of the right to dispense favors at will, of the usefulness of the veto power, and the necessity of conducting government on business methods, can be furnished than are found in the President's vetoes of special pension bills. Some of these bills were vetoed because the claims named in them had already been allowed, and the effect of permitting them to become laws would be to deprive the claimants of several months' pay. Some were disapproved because the claims were still pending in the pension office; some, because disability existed before, and some, because it was occasioned after service. Most of the bills disapproved were in respect of claims which had already been minutely, and, in many instances, frequently examined and rejected in the pension office; but in each instance, where time was afforded, the President made a careful examination for himself, being compelled to let, however, a large number become laws for want of time to make such examination; of itself a commentary on the objectionable manner in which this business is conducted. It is impossible to recapitulate the grounds of all these vetoes, but a few examples will suffice:

One case was this, as stated by the President:

> This man "was mustered into the service October 26, 1861; he never did a day's service, so far as his name appears, and the muster-out roll of his company reports him as having deserted at Camp Cameron, Pennsylvania, November 14, 1861. He visited his family about the first day of December, 1861, and was found December 30, 1861, drowned in a canal about six miles from his home. Those who prosecute claims for pensions have grown very bold when cases of this description are presented for consideration."

In another instance the committee reported favorably, "in view of the long and faithful service and high character of the claimant." The President states the facts and continues:

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"Thus it quite plainly appears that this claimant spent most of his term of enlistment in desertion or in imprisonment as a punishment for that offence, and thus is exhibited 'the long and faithful service and the high character of the claimant,' mentioned as entitling him to consideration by the committee who reported favorably upon this bill. I withhold my assent from this bill because if the facts before me, derived from the army records and the statements of the claimant, are true, the allowance of this claim would, in my opinion, be a travesty upon our whole scheme of pensions and an insult to every decent veteran soldier."

Yet another case was this: The mother of the decedent, her husband, the father, having abandoned her, was allowed a pension as dependent mother from 1862 to 1884, when she died. The father applied in 1877, alleging the death of his wife, but the claim was rejected by the pension office because she was living, and after her death again rejected because of the abandonment. The President says:

"The allegation in 1877 of the man who now poses as the aged and dependent father of a dead soldier, that the mother died in 1872, when at that time her claim was pending for pension, largely based upon his abandonment; the affidavit of the man who testified that he saw her die in 1872; the effrontery of this unworthy father renewing his claim after the detection of his fraud and the actual death of the mother, and the allegation of the mother that she was a widow, when in fact she was an abandoned wife, show the processes which enter into these claims for pensions and the boldness with which plans are sometimes concocted to rob the government by actually trafficking in death, and imposing upon the sacred sentiments of patriotism and national gratitude."

These illustrations serve to indicate the character of this special legislation; and in several of the messages, notably those of May 8, 1886, Juue 21, 1886, and July 5, 1886, the President remonstrates against the "policy of frequently re-"versing, by special enactment, the decisions of the bureau in-"vested by law with the examination of pension claims, fully "equipped for such examination, and which ought not to be sus-"pected of any lack of liberality to our veteran soldiers," and the evident want of care in the passage of bills of this character.

In the message of June 21, 1886, he says:

"In speaking of the promiscuous and ill-advised grants of pensions, which have latterly been presented to me for approval, I have spoken of their 'apparent congressional sanction,' in recognition of the fact that a large proportion of these bills have never been submitted to a majority of either branch of Congress, but are the results of nominal sessions, held

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for the express purpose of their consideration, and attended by a small minority of the members of the respective houses of the legislative branch of government. Thus in considering these bills I have not felt that I was aided by the deliberate judgment of the Congress; and when I have deemed it my duty to disapprove many of the bills presented, I have hardly regarded my action as a dissent from the conclusions of the people's representatives. I have not been insensible to the suggestions which should influence every citizen, either in private station or official place, to exhibit not only a just, but a generous appreciation of the services of our country's defenders. In reviewing the pension legislation presented to me, many bills have been approved upon the theory that every doubt should be resolved in favor of the proposed beneficiary. I have not, however, been able to entirely divest myself of the idea that the public money appropriated for pensions is the soldiers' fund, which should be devoted to the indemnification of those who, in the defense of the union, and in the nation's service, have worthily suffered, and who, in the day of their dependence, resulting from such suffering, are entitled to the benefaction of their government. This reflection lends to the bestowal of pensions a kind of sacredness which invites the adoption of such principles and regulations as will exclude perversion, as well as insure a liberal and generous application of grateful and benevolent designs. Heedlessness and a disregard of the principle which underlies the granting of pensions is unfair to the wounded, crippled soldier, who is honored in the just recognition of his country. Such a man should never find himself side by side on the pension roll with those who have been tempted to attribute the natural ills to which humanity is heir, to service in the army. Every relaxation of principle in the granting of pensions invites applications without merit, and encourages those who, for gain, urge honest men to become dishonest. Thus is the demoralizing lesson taught the people, that, as against the public treasury, the most questionable expedients are allowable. During the present session of Congress, 493 special pension bills have been submitted to me, and I am advised that one hundred and eleven more have received the favorable action of both houses of Congress, and will be presented within a day or two, making over six hundred of these bills which have been passed up to this time during the present session, nearly three times the number passed at any entire session since the year 1861. * * * I have now more than one hundred and thirty of these bills before me awaiting executive action. It will be impossible to bestow upon them the examination they deserve, and many will probably become operative, which should be rejected. In the meantime I venture to suggest the significance of the startling increase in this kind of legislation and the consequences involved in its continuance."

Notwithstanding the earnest words of the President, which ought to have arrested Congress in its career of careless and improvident legislation, acts for relief in alleged special cases

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of a character similar to those previously mentioned, continued to pour in, and finally what is known as the "Dependent Pension Bill" was sent to the President and defeated by his veto.

This was the first general bill passed since the close of the civil war, allowing a pension to the soldiers and sailors of that war upon the ground of service and present disability alone without reference to injuries received by the casualties or incidents of such service. It exacted only a military or naval service of three months, without any requirement of actual engagement in battle or subjection to any of the actual dangers of war, and the 11,303 men who enlisted in December, 1864, and were discharged from rendezvous at the close of the war were as much entitled under it as those who reached the front. It required no injury, disability, loss or damage of any kind in any degree referable to the military service as a prerequisite to allowance of pension.

It did require that the applicant should be incapacitated for the performance of labor in such a degree as to render him unable to earn a support, but it was so worded that this inability needed to be only an inability in *some* degree, so that a person of some property, but to whom labor in some degree was necessary to his support, but who was not receiving support from others, might claim under it.

The pension bill of 1818 was passed thirty-five years after the close of the revolutionary war, to soldiers in which, it referred. The Mexican pension bill was passed thirty-nine years after the termination of that struggle, and provided that the claimant should be sixty-two years of age and have served sixty days, or been actually engaged in battle.

These bills embraced persons advanced in age, presumed to be comparatively few in number, and whose circumstances, dependence and disability were clearly defined and could be quite clearly fixed.

The bill in question was passed twenty-two years after the close of the civil war, and before a large majority of its beneficiaries had advanced in age beyond the strength and vigor of middle life.

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The number of pensions granted under all laws to the soldiers of the revolution is given at 62,069; to soldiers of the war of 1812 and their widows, 60,178; to soldiers of the Mexican war and their widows, up to June 30, 1885, 7,619.

From 1861 to June 30, 1886, 561,576 pensions had been granted for disability, etc., incurred in the war of the rebellion, and more than 2,600 pensioners added to the rolls by private acts.

On the 1st day of July, 1886, 305,605 pensioners of the civil war were on the rolls. For the year ending June 30, 1887, $75,000,000 have been appropriated for the payment of pensions, and the amount expended for that purpose from June, 1861, to July, 1, 1886, was $808,624,811.51.

This bill allowed $12 a month to the soldiers of all wars entitled to avail themselves of it, and irrespective of grading, thereby in effect allowing 202,621 persons receiving a less rate of pension than $12 a month to increase it to that amount..

When the law of 1818 was upon its passage, the number of pensioners to be benefited by it was estimated at 374; but the number of applicants was 22,297, and the number of pensions actually allowed 20,485, costing the first year $1,847,900, instead of $40,000, the estimated expense.

Under the law of 1853, for the benefit of surviving widows of revolutionary soldiers, who were married after January 1, 1800, the number was estimated at 300, but the number of pensions allowed was 3,742; the expense was estimated at $24,000 the first year, and was in fact $180,000.

The promoters of the arrears of pensions law insisted that its cost would not exceed $20,000,000. It has already taken $218,000,000 from the treasury.

The estimate of the cost under this bill was five to six millions, but the probable result would not have been less than $72,000,000.

There are a million of men in the country who served in some war who might become candidates for pensions under this bill, and fully one-half would get them, making at one hundred and forty-four dollars a year, $72,000,000.

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In the issue of the New York Nation of February 3, 1887, will be found the annual cost of the European military establishments with the numbers which compose them, as compared with our present and the proposed pension list, as follows:

	ANNUAL COST.	NUMBERS.
Great Britain.....	$102,477,010	209,480
Austria-Hungary.....	51,307,602	286,423
Germany.....	91,522,495	449,342
France.....	126,366,086	523,283
U. S. present pension list	75,000,000	365,783
As proposed.....	147,000,000	865,783

Comment is unnecessary.

On the 11th of February, the President returned this bill with his reasons for disapproving the same, reasons so powerful in themselves and so clearly and vigorously presented, as to command general attention and commendation, and the defeat of the measure.

Appreciation of the value of the executive right to requre reconsideration seems steadily increasing.

In twenty-four of the States, a two-thirds vote is required to override a veto, in two, a three-fifths vote, in eight, a majority only. Four of the States have never given the power to their governors.

Experience demonstrates that it would be eminently wise to so amend our Federal Constitution as to allow the exercise of the veto upon single items or sections in appropriation bills.

Melville W. Fuller.

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SUFFRAGE A RIGHT OF CITIZENSHIP.

Neither in the Declaration of Independence nor in the Federal Constitution were any new truths proclaimed concerning the political rights of man. Not only can these truths be traced to Rousseau, to Locke, Harrington and Sidney, but we can go back more than two thousand years, and find them announced by Plato, Aristotle and others. The natural rights of individuals had long been well understood.

What our forefathers undertook to do was, to frame a government based upon a recognition of these rights; one which should furnish scope for their exercise and provide means for their protection. Acting upon old and well established maxims, the founders of our government undertook so to adjust its powers as to render permanent the liberty of the individual.

Suffrage is the mode in which the citizen participates in the government. Has the citizen a right to participate in the government? If so, then suffrage is a right of citizenship. It is just as essential to the working of a republican form of government as the motive power of the steam engine is to the movement of the vessel which it propels. If it is a privilege merely, who has the right to grant it? And whence originated such right? If those now exercising the suffrage hold it as a mere privilege, then they may at any time be deprived of it. Suffrage is by some admitted to be a right of the people as a whole, while it is denied to be a right of the individual. But who are the people who are thus entitled? If the term does not include all classes of citizens, under no natural or criminal disability, then whom does it include? If it includes some one class, subject to such disabilities, and not

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other classes subject to the same disabilities, then our government is not a republic but an aristocracy. What class of citizens has a right to exclude all other classes? And whence did the favored class obtain this right of exclusion?

Of course there must be some legislative rules and regulations for the exercise of the right, but these must not be carried so far as arbitrarily to deny the right itself to the citizen. What is an arbitrary denial? Let us see. In regulating the suffrage, it becomes necessary to declare certain disabilities, for reasons founded in the nature of things. For instance minority. It is necessary to fix a time when the incapacity for want of sufficient age may be considered at an end. But the remainder of the community retain the right of suffrage, and the privilege of exercising the right.

The right to exclude for crime is conceded, but this when examined, so far from being in conflict with the doctrine here contended for, will be found to be confirmatory of it. The criminal made war upon the community, and has practically withdrawn from the social compact. He has therefore forfeited his right to participate in the affairs of the community. His exclusion comes clearly within the definition of a "regulation." A regulation must have for its object the preservation of the right, and not its destruction or abridgment.

"All regulations of the elective franchise," says Judge Cooley, "must be reasonable, uniform and impartial; they must not have for their purpose directly or indirectly to deny or abridge the constitutional right of citizens to vote, or unnecessarily to impede its exercise; if they do they must be declared void."—Cooley's Constitutional Limitations, p. 602.

And in reply to objections which had been made to certain registry laws on the ground that they violated the foregoing rule, he says:

"The provision for a registry deprives no one of his right, but is only a reasonable regulation under which the right may be exercised."—Ibid. p. 602.

The arbitrary exclusion of a whole class cannot in any just sense of the term be called a regulation.

The right to vote is not derived from the legislature. It was in the people before the legislature was elected; and had

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been recognized and regulated by previous legislatures and Constitutional conventions. No legislative assembly or Constitutional convention in this country can be specified previous to which the right of suffrage did not exist. In fact it was by the exercise of that very right that such assembly or convention was called into existence.

If suffrage is a mere privilege, at the discretion of the legislature, then one legislature can deny it to one class of citizens, the next legislature to another, and so on, until our form of government shall have become completely subverted.

Madison declared that it was by a gradual abridgment of the right of suffrage that aristocracies had been built on the ruins of popular forms of government.—*Elliott's Debates, vol. 5, p. 388.*

The science of free government cannot be made an inductive one, in the sense of experimenting to find how many rights may be safely doled out to the people. Our government is founded upon the fundamental doctrine of human rights and human equality, and upon that doctrine it must stand or fall.

What is a citizen? In the Report of the Committee on Elections in the House of Representatives, made in 1824, in the case of *John Bailey*, which was adopted by a large majority in the House, the word "citizen" was defined as "a member of a political society."

In *Wheaton's History of the Law of Nations*, p. 751, a republican form of government is defined to be that form of government where the citizen participates by his representative in the exercise of legislative power. But how can the citizen thus participate by his representative, unless he has a right to vote for that representative? Jefferson defines a republic as "a government, by its citizens in mass, acting directly and personally according to rules established by the majority;" and he declared every other government to be more or less republican in proportion as it had in its composition more or less of this ingredient of the direct action of the citizens.—*Letter to John Taylor of Caroline, Jefferson's Works, vol. 7, p. 605.*

The fathers of the Republic looked upon suffrage as a right. Madison called the right of suffrage one of the fundamental

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articles of a republican government, and thought it ought not to be left to be regulated by the legislature.—*Elliott's Debates, Vol. 5. p. 388.* Jefferson said, "Let every man who fights or pays, exercise his just and equal rights in election." Payne said, "The right of voting for representatives is the primary right by which other rights are protected."

Benjamin Franklin said:

"Liberty or freedom consists in having an actual share in the appointment of those who frame the laws." * * "They who have no voice nor vote in the electing of representatives do not enjoy liberty, but are absolutely enslaved to those who have votes and to their representatives."—Franklin's Works, vol. 2, p. 372.

Hamilton said:

"A share in the sovereignty of the State, which is exercised by the citizens at large in voting at elections, is one of the most important rights of the subject, and in a republic ought to stand foremost in the estimation of the law. It is that right by which we exist as a free people."—Hamilton's Works, vol. 2, p. 315.

In more modern times the right has frequently been asserted in debate in Congress. "God gave the right" said Senator Wade in his seat, when the subject was under discussion. —*Congressional Globe, 1st Sess. 39th Cong. p. 838.*

Chas. Sumner said:

"I have no hesitation in saying that universal suffrage is a universal right, subject only to such regulations as the safety of society may require. These may concern (1) age, (2) character, (3) registration, (4) residence." —Cong. Globe, 1st Sess. 39th Cong. Pt. 1, p. 685.

The right of suffrage as an attribute of citizenship is recognized by the very wording of the fourteenth and fifteenth amendments.

The second section of the fourteenth amendment provides that when the "right to vote" is denied in any State to any of the male members of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged except for participation in rebellion or other crime, the basis of representation therein shall be reduced, etc. Here the right of a citizen of the United States to vote is spoken of as an attribute of citizenship, and a penalty is provided against the denial or abridgment of the right of certain classes of citizens. Will it be said that by implication the denial or abridgment

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of the right of other classes of citizens, is permitted?

The answer is, that rights cannot be taken away by implication. This rule of construction is well settled.

Where the liberty of the individual is involved, statutes should be construed strictly.—*U. S. Digest, 1st Series, vol. 12, "Statutes," p. 748, Par. 1002.*

In the application of this principle, it has been held that the exclusion of the citizen from giving evidence is somewhat opposed to natural right, and ought not to be extended beyond the letter of the statute. *Pelham v. Messenger 10 La. Ann. 99.*

So also statutes disabling persons from making contracts are to be construed strictly.—*Smith v. Spooner, 3 Pick. (Mass.) 229.*

In construing the Constitution of the United States, when words used in it are susceptible of more meanings than one, they must be considered as used in the meaning least favorable to the delegation of power.—*U. S. Digest, 1st Series, vol. 3, p. 376.*

This rule of construction forbids us to consider the power to exclude other classes than the one named, from the suffrage, as having been granted to the States by the 14th amendment, unless such power of exclusion was necessary in order to enforce the penalty prescribed in that amendment. But such power was not necessary for that purpose; therefore it was not granted.

"Equality of rights, privileges and capacities unquestionably should be the aim of the law; and if special privileges are granted, or special burdens or restrictions imposed in any case, it must be presumed that the legislature designed to depart as little as possible from this fundamental maxim of government. The State, it is to be presumed, has no favors to bestow, and designs to inflict no arbitrary deprivation of rights. Special privileges are always obnoxious, and discriminations against persons or classes are still more so, and, as a rule of construction, are always to be leaned against as probably not contemplated or designed."—Cooley's Constitutional Limitations, p. 393.

In applying these principles the author holds that constitutional provisions placing restrictions upon the elective franchise should be strictly construed.—*Ibid. p. 394.*

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The fifteenth amendment is still more explicit in its recognition of citizen suffrage.

"The right of citizens of the United States to vote shall not be denied or abridged by the United States or any State on account of race, color, or previous condition of servitude."

Here suffrage is spoken of as a "right of citizens of the United States," which should not be denied or abridged on account of race, etc.

Article IV, Sec. 2, of the Constitution of the United States provides that the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States; and the fourteenth amendment provides that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.

What are these privileges and immunities? Is not suffrage one of them?

Justice Washington, in the case of *Corfield* v. *Coryell, 4th Wash. Cir. Ct. Rep. (U. S.), p. 380*, said:

"The enquiry is, 'What are the privileges and immunities of citizens in the Several States?' We have no hesitation in confining these expressions to those privileges and immunities which are in their nature fundamental; which belong of right to all free governments."

After enumerating various rights which in his opinion come under the head of privileges and immunities, he says:

"To which may be added the elective franchise, as regulated and established by the laws or Constitution of the State in which it is to be exercised."

The case of Corfield v. Coryell is cited as good law in Kent's Commentaries. Speaking of this decision Chancellor Kent says:

"It was declared in Corfield v. Coryell, that the privileges and immunities conceded by the Constitution of the United States to citizens in the several States were to be confined to those which were in their nature fundamental, and belonged of right to the citizens of all free governments. Such are the rights of protection of life and liberty, and to enjoy and acquire property, and to pay no higher impositions than other citizens, and to pass through or reside in the State at pleasure, and to enjoy the elective franchise according to the regulations of the law of the State."—Kent's Commentaries, vol. 2, p. 72.

The principle laid down by Justice Washington and impliedly endorsed by Chancellor Kent, was applied, and a con-

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struction given to Art. IV, Sec. 2, of the Constitution of the United States, in *Abbott v. Bailey, 6 Pickering (Mass.) Rep., p. 91.*

Art. IV, Sec. 2, provides that the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States. In *Abbott v. Bailey*, Chief Justice Parker says that citizens of one State going into another, must reside there for such time as may be prescribed for other citizens before they will be entitled to vote. But he manifestly considers the right to vote one of the full rights of citizenship. In order to test this matter let us suppose the Legislature of Illinois should declare by statute that no citizen of Tennessee should ever be permitted to vote in Illinois? Would not that be a violation of Art. IV, Sec. 2, of the Constitution of the United States?

In *Minor v. Happersett, 21 Wallace, U. S., Sup. Ct. Rep., pp. 162 to 178*, plaintiff, who claimed the right to vote in Missouri, made, through counsel, the following points:

1. As a citizen of the United States, the plaintiff was entitled to any and all the "privileges and immunities" that belong to such position however defined; and such as are held, exercised and enjoyed by other citizens of the United States.

2. The elective franchise is a "privilege" of citizenship in the highest sense of the word. It is the privilege preservative of all rights and privileges; and especially of the right of the citizen to participate in the government.

3. The denial or abridgment of this privilege, if it exist at all, must be sought only in the fundamental charter of government—the Constitution of the United States. If not found there, no inferior power or jurisdiction can legally claim the right to exercise it.

4. But the Constitution of the United States, so far from recognizing or permitting any denial or abridgment of the privileges of citizens, expressly declares that "no State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States.

Waite, Ch. J., in delivering the opinion of the court, decided that the class of persons to which plaintiff belonged were citizens of the United States. The practice of the government was referred to and the subject considered from various points of view, and at considerable length.—*pp. 165-170.*

The Court continuing, says:

"The Constitution does not define the privileges and immunities of citizens. For that definition we must look elsewhere. In this case we need

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not determine what they are, but only whether suffrage is necessarily one of them.

"It certainly is nowhere made so in express terms. The United States has no voters in the States, of its own creation. The elective officers of the United States are elected directly or indirectly by State voters."—p. 170.

The court then says:

"The amendment (14th) did not add to the privileges and immunities of a citizen. It simply furnished an additional guaranty for the protection of such as he already had. * *

"It is clear, therefore, we think, that the Constitution has not added the right of suffrage to the privileges and immunities of citizenship as they existed at the time it was adopted. This makes it proper to inquire whether suffrage was co-extensive with the citizenship of the States at the time of its adoption."

[Plaintiff's counsel had not claimed that suffrage was co-extensive with citizenship as a matter of fact. They admitted, not only the historical fact of exclusion, but the legislative power, in the exercise of the right of regulation, to exclude some citizens from the exercise of the right, for reasons founded upon the nature of things. But they claimed that suffrage was in each State a right of the citizen of the United States, which the State could regulate but not destroy.]

The court then proceeds to consider who were in the exercise of suffrage in the various States at the time of the adoption of the Constitution, and adds:

"In this condition of the law in respect to suffrage in the several States, it cannot for a moment be doubted that if it had been intended to make all citizens of the United States, voters, the framers of the Constitution would not have left it to implication. So important a change in the condition of citizenship as it actually existed, if intended, would have been expressly declared."—p. 173.

The closing paragraph will show upon what ground the decision was finally based:

The Court says, that being of the opinion "that the Constitution of the United States does not confer the right of suffrage upon any one," and that the Constitution and laws of the several States which had committed that important trust to a class of citizens different from that to which plaintiff belonged were not necessarily void, they affirmed the judgment. —*p. 178.*

Here the final opinion is based upon the ground that the

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right of suffrage was not conferred upon any one by the Constitution of the United States.

But on p. 170 the Court had stated that the Constitution did not define the privileges and immunities of citizens. That we must look elsewhere to find what they were. It was there held that we must look outside the Constitution for a definition of the privileges and immunities of citizenship. In the final opinion it is held in legal effect that if the right of suffrage is claimed as a privilege of citizenship, it must be found so defined in the Constitution; otherwise the claim cannot be sustained. All considerations based upon the nature of our government and the impossibility of participating in it without the exercise of the suffrage, are entirely ignored.

On p. 170 the Court says, "The United States has no voters in the States, of its own creation."

It was not necessary that the United States should create voters in the States. The voters in the States created the United States. In so doing they became citizens of the United States, and having previously been voters, they were now voting citizens, or citizen voters. Living in the several States—and they could live nowhere else—they were still, in voting for national officers, national voters. If, living in the States, they could be citizens of the United States, could they not, at the same time, be voters of the United States?

Will it be said that the whole question of suffrage was turned over to the States? Not so. Because, though so far as State officers are concerned, the States have full power to regulate the suffrage, so long as they keep within the limits of a reasonable regulation, and do not by an unreasonable one abridge the suffrage as one of the privileges and immunities of citizenship, still, so far as Congress is concerned, the Constitution of the United States has itself regulated the question of suffrage, by prescribing the qualifications of voters. [See Art. 1, Sec. 2.] It is true that those qualifications are to be the same as those of voters for the most numerous branch of the State Legislature; but that makes no difference. The point is, that the Constitution has taken jurisdiction of the question. If it can make the qualifications of voters for Congressmen the

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same as those of voters for members of the State legislature, then it could also have made them different. By prescribing what the qualifications shall be, it has shown that the United States has voters of its own.

Counsel for Plaintiff had claimed that it was the denial or abridgment of the right of suffrage, which, if it existed, was to be sought in the Constitution. It was there that we were to look to see if the voters, at the time of framing the Constitution, had placed any limitation upon their right of suffrage, or had authorized its abridgment. The Court held, in effect, that the right of suffrage itself, if it existed, as a privilege or immunity of citizenship, was to be sought in the Constitution; though it had previously been held, in the same opinion, that the privileges and immunities of citizenship had not been defined in the Constitution.

The final opinion is based upon the fact that the right of suffrage is not conferred in the Constitution. But the Constitution is not a grant of rights to the people. It is a grant of power from the people and the States to Congress. The people did not need to confer the right of suffrage upon themselves. They already had it when the Constitution was adopted. They framed a Constitution for the general government, but they did not make that instrument the depository of all their political rights. To prevent such a construction they adopted two amendments: the IXth, which declares that the enumeration in the Constitution of certain rights should not be construed to deny or disparage others retained by the people; and the Xth, which declares that the powers not granted to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people.

The voters of that day, by the very act of forming a government became citizens of the government they were forming, and as such citizens, had a right to participate in that government. But this participation could only be made effectual in one way; by the exercise of the right of suffrage. Thus voting and citizenship became inseparable. And because they did not immediately admit all citizens to share the suffrage with them,

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it does not follow, that with them it was not an attribute of citizenship, or that they had a right arbitrarily, or without any good and sufficient reason, to exclude other citizens from the right which they themselves possessed.

They previously had been and still were citizens of the States in which they resided, and as such citizens they there had the right of suffrage. They had not derived it from the State legislatures nor from the State constitutions. The State constitutions are not grants of power or of rights, but mere limitations upon the power of the State legislatures; and all declarations in the State constitutions of the right of suffrage in certain citizens or classes of citizens must be looked upon as equivalent to prohibiting the legislature from preventing such citizens or classes of citizens from voting. It is equivalent to saying that the legislatures may in the exercise of a sound discretion, in regulating the suffrage, exclude, for good reasons, some citizens, (not necessarily all those not mentioned) but that they must not exclude the citizens or classes of citizens specified in the constitutions of their States.

The fallacy consists in assuming that the State constitutions are the sources of the right of suffrage. Suppose all the State constitutions had been silent upon the subject? Would not the State legislatures still have had the power to regulate the elective franchise as a right inherent in the people? Would the entire machinery of government have been suspended, on the ground that there had been a failure to furnish the necessary motive power for putting it into operation?

Having thus the right of suffrage in the States where they resided, a right not dependent upon any State legislature or constitution, but superior to all of them, when, by virtue of their own act, the people who framed the Federal Constitution became citizens of the United States, they at once had the right of voting for members of the national Legislature; a right which could not be taken away by any legislation, state or national.

A State legislature has not such an arbitrary control over the elective franchise that it can rightfully or legally exclude an entire class of citizens from the suffrage so effectually that

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they can never attain it. The foreigner can become a voter by being naturalized; the infant can become a voter when he arrives at the age of twenty-one. Even a criminal can become a voter by being pardoned and restored to his civil and political rights. But the class of citizens to which the complainant in *Minor v. Happersett* belonged, could not, under the construction which has prevailed, by any lapse of time or by any act of their own become voters. To justify such an exclusion as this, it would have been necessary to decide not only that the Constitution did not confer the right of suffrage, but that there was no such right at all in the citizen. But the Supreme Court would have hesitated to say that the people who formed this government had no right to participate in it, except as such right should be granted to them by their State legislatures, or by the constitutions which they had framed.

In the Dred Scott case it was held that a certain class of citizens had no rights which the class in power were bound to respect. But the class thus judicially debarred of all civil and political rights, are to-day in the full enjoyment of these rights. The case of *Minor v. Happersett*, though less explicit in statement, quite as effectually debarred from the exercise of the most important political right, an entire class of citizens.

When the Somerset case was decided by Lord Mansfield, there were 15,000 slaves in the British Isles alone, besides the much larger number under British dominion. An immense number of people obtained their liberty as the result of this decision.

A liberal construction of the Federal and State constitutions, in accordance with their spirit and with the genius of our free institutions, would result in recognizing suffrage as a right of citizenship, subject to regulations, reasonable in themselves and uniform in their operation. When such right, subject to such regulations, shall be recognized as inherent in citizenship, whether such recognition shall be first by legislative or judicial action, then, and not till then will we have in fact as well as in theory, a republican form of government.

Charles B. Waite.

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RECOLLECTIONS OF LYSANDER SPOONER

It is not at all remarkable that, upon the announcement of his death, a few days ago, in Boston, at the advanced age of 80 years, some of the admirers of Lysander Spooner should have pronounced him one of the greatest Americans of the age, coupled with the rather incongruous qualification that he is scarcely known to the people of the present generation. The secret of the saying lies in this: While Spooner possessed intellectual qualities of the very highest order—a style of writing scarcely equaled in the English language for grace, terseness, clearness and copiousness of illustration, and powers of logic almost irresistible, he bent his energies to tasks that other men would never have undertaken—to the elucidation of subjects that seemed to be entirely out of the range and region of popular thought, and for the most part beyond the reach of human accomplishment.

Thus one of his earliest crusades was against the Post-office department on account of its assumed monopoly of the right to carry the mails; and he carried on such a long and vigorous warfare against it that he nearly ruined himself financially. Later along in the old abolition days he wrote his masterly treatise upon the "Unconstitutionality of Slavery," right in the teeth of the generally acknowledged sanction which the constitution gave to that system—a treatise nevertheless of such marked ability, of such breadth of thought and depth of logic, that men who stood aghast at its boldness, soon became converts to its doctrines; and the greater part of the old abolition party stood fast and swore by Spooner's argument, as if it had been a revelation from heaven. Then he took up

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the venerable system of Trial by Jury, and he riddled it from top to bottom with the same kind of hot shot he had employed against other abuses that had become hoary with age.

It is to be remarked that this intellectual giant bore the brunt of the fray on his single shield. He stood almost always alone and in the forlorn hope. Where other men would have faltered and quailed in their championship of a cause, because it seemed so utterly useless and hopeless and beyond human achievement, Spooner would take it up with the high-wrought courage, zeal and fierce assailment of a veritable knight-errant; and whether he battled with true knights, or only with windmills—"gorgons and hydras and chimeras dire"—it was all the same—this grand old hero never looked to the right or to the left, or asked himself the question whether his high emprise was bound to suffer defeat or win a victory. But he dashed on into the midst of the fray with a mettle, and elevation of purpose and confidence of success, which, if they had been exerted with half their intensity in other fields of thought and action, would have won their possessor the applause of the world for all future time.

I knew Spooner well for many years, and I doubt if such a thing as human applause, the plaudits of the multitude, ever entered his thoughts or directed his purposes in the least. His soul soared above them. And as for personal aggrandizement of any kind, he never thought of it for a moment. He acted solely in all that he did and said from a high sense of rectitude and honor, never according to the conventionalities of worldly or social life. He would scorn to take a fee for defending a criminal, because he believed it his duty to take up his cause gratuitously from a sense of natural justice. Nor would he turn a deaf ear to the importunity of suffering, under any conditions.

"His pity gave, ere charity began."

The better to help others he practiced a rigid self-denial himself. One meal a day, and a frugal one at that, was the limit to his appetite for many years of his life. On a very limited income he managed, like Pope's "Man of Ross," to relieve the wants of many.

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> "Is there a variance? enter but his door,
> Balked are the courts, and contest is no more.
> Despairing quacks with curses flee the place,
> And vile attorneys, now a useless race."

Had this man but followed the beaten path of his profession, he might have amassed wealth, and gained office and distinction. But he preferred to make sacrifices and remain comparatively poor and obscure rather than abate one jot of what he considered due to his independent manhood.

Is there no lesson, no concernment for the rest of us, in the life of such a brave, spotless, unselfish soul? How high it soars above the insatiable greed and ambition of ordinary natures! above the whole brood of "plumed" politicians, little and big, with which the times are rife! What a contrast such a career to that of the innumerable procession who are climbing, climbing, the back-stair way, into high places of honor and profit!

Here was a man of genius, who thought and wrote much upon public questions, yet never clamorous for distinction, never bustling, never elbowing his way to the front, whose life reminds you of the simplicity of the ancient sages. Nay, more than that, many of his thoughts and reflections upon social and political problems are as profound and original as those of the best of the early and late philosophers, like Plato and Compte. And very likely many of his theories on the same subjects may be as crude and visionary as theirs. The times are not ripe for the realization of Spooner's visions—possibly they may never be; though no one can say that some of these visions shall not become living and breathing forms in the future of the Republic. What he has published upon financial topics, upon the Jury system, upon the "Law of Intellectual Property," and many kindred subjects, was written after mature reflection, and from the original stand-point of a bold and independent and, if you please, erratic thinker. Hence many of his observations clash with the received opinions of the day; and it is only through the justice which posterity shall mete out to him that Spooner or his friends can expect a complete vindication of his purposes, or a verification of his prophecies.

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The only charge with which his enemies could ever assail Spooner's character, when living, was to call him an infidel; and now that he is laid in his grave, this charge has been renewed, as if it had some force. But the instances of intelligent men and women, whose lives are beyond reproach, throwing off the trammels of the old faith, are getting to be so numerous as to form the rule rather than the exception. Such a charge, therefore, against so spotless a character as that of Spooner recoils against those who make it. It is a little singular, how many of the "old guard" in the anti-slavery ranks should have fallen under a similar aspersion. There was that gentle, pure soul, (a saint, if there ever was one on earth), Nathaniel P. Rogers, and George Bradburn, and Lysander Spooner, all so richly endowed with the rarest gifts of heart and brain, all intellectual giants, all tried friends, and among the earliest battlers in the cause of human freedom—and yet all so tainted with heresy as to place them beyond the pale of any of the churches. It was Rogers, I believe, who said if the Bible sanctioned slavery, he would none of it; and it was doubtless from some such motive or motives that the rest were persuaded to discard it. But whatever the motive leading up to unbelief, the day has passed, and passed, let us hope, never to return, when the "stanchels of sect" can be used to prop up any man's character, or the reproof of infidelity to tear it down.

Wm. Brackett.

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A CELEBRATED CASE.

Kerr v. Phillips—Phillips v. Phillips—South Park Commissioners v. Phillips et al.—Claim of Mrs. Phillips for Dower, Homestead and an Estate under a Trust.

PRELIMINARY STATEMENT—OPINION OF JUDGE TULEY—OPINION OF THE SUPREME COURT—ASSESSMENT OF DAMAGES.

The litigation over what is known as the Phillips tract, situated in the center of Jackson Park, on the Lake Shore, about seven miles South of the city, is full of interest and some romance, both on account of its duration and the parties interested in it. It has outrivaled the celebrated case of "Jarndyce v. Jarndyce," and the "Peter Peebles case." It dates back to the year 1858. It had lasted about 30 years from the time of the commencement of the litigation, when Judge Tuley, in a very able decision, given below, practically ended it.

Charles B. Phillips, about the year 1850, purchased this tract composed of about 200 acres, of an old resident by the name of Cornelius Lansing for the sum of $500. In the fall of 1851 Phillips married Elizabeth Ann Wright, the daughter of a then distinguished and celebrated physician in the city of Cincinnati, Dr. Thomas Wright; and soon after Phillips' marriage he conveyed this farm to Dr. Wright in trust for the benefit of his then bride. In May, 1852, Phillips wrote to Dr. Wright to return him the papers he left in trust for Mrs. Phillips, as he had concluded to give Mrs. Phillips a deed of the farm as a permanent home, she, however, to take the farm off his hands and her father to supply her a farmer. She complied with his request, and expended large sums of money up-

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on the farm, derived from her father, on the faith of such settlement. Phillips was most of the time absent, and her care and management of the farm was such that the open and notorious opinion of her neighbors was, that she was the owner of the farm. This notoriety is good evidence of title.

Phillips moved on the farm with his wife in the spring of 1852 and his wife, and her children as they were born, continued to live on it until January, 1862.

On the 5th of January, 1862, Phillips, who had been sometime away from his family, and who had formed free love notions, and had published a book against the sanctity of the marriage relation, returned to his home, and after having sent all his papers and packages away, remained at the farm with his wife until midnight of that day, when it was discovered that the house was on fire. Mrs. Phillips fled from it, escaping with hardly sufficient clothing to keep her warm on a midsummer, instead of midwinter, night. The house and all its contents were destroyed by the fire, and Phillips in a few days abandoned his wife and family, and they have never met, except at the trial of these causes, from that day to this. While Mrs. Phillips was residing upon the farm with her little ones, and managing it as her own, Phillips, who was away somewhere in Ohio, in the year 1857, visited Granville, in that State, where he met William P. Kerr, an old acquaintance. The result of that meeting was that Kerr agreed to furnish Phillips with money to locate lands along the line of the then projected Illinois Central Railroad. It was represented by Phillips that he was to get information from the officers of the road as to where the depot sites were to be. Kerr sent some $5,000 or $6,000 to Phillips at Chicago, which Phillips claims to have lost in one Hitz' bank in the city of Chicago. Kerr, however in December, 1858, sued Phillips and recovered a judgment for the sum of $6,410 and costs. Upon this judgment he issued execution against Mrs. Phillips' land and sold it as Phillips' own property. It will thus be seen that the unfortunate and innocent wife was made the victim, by the loss of her property, of a combination between her husband and a stranger. Kerr, in 1865, obtained a judgment in ejectment

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on a sheriff's deed for this land against a tenant of Phillips, who held the lease from Phillips under the name of Charles Phillips Burton.

In 1866, Mrs. Phillips, who had not seen Mr. Phillips since the burning of her home, employed Mr. Paul Cornell and Messrs. Leaming and Thompson, attorneys in the city of Chicago, and Mr. Charles H. Atkins, a connection of Mr. Phillips, to find out Phillips, and when found to endeavor to make some arrangement that she might defend her home; Philips having failed to record her deed to the farm and thereby put her title as against Kerr in great peril. In the meantime Phillips had sued out an attachment against Kerr in the city of Chicago, and had seized the farm as Kerr's farm and had attempted to sell it as such, but the attempt was frustrated.

In the spring of 1868, Mr. Cornell found Phillips in the city of New York attending the Republican Convention held in that city, and persuaded him to meet the parties in Chicago about the month of August of that year. Phillips came during August, 1868, to Chicago, and insisted that before he would have any transactions with his wife he must have $1500 in cash, and that the title of the land stood in one Charles Phillips Burton, a fruit grower in California, who would convey to Mrs. Phillips the South half of the land and reserve for Mr. Phillips' use the North half or the North one hundred and three acres only on receipt of the $1500. A deed to Atkins as the trustee of Mrs. Phillips was made by Phillips on the 21st of August, 1868, and she joined in the same deed on the 31st of August, 1868, and paid the $1500. Atkins conveyed the North one hundred and three acres for the benefit of Burton or Phillips and retained the balance for the benefit of Mrs. Phillips. Atkins afterward made a contract with Mrs. Phillips whereby, for his services and the services of such attorneys as he should employ, he should have all the land except five acres. This contract being unsatisfactory, subsequent contracts were made, all of which expired by their own limitation.

In the year 1871, notwithstanding Phillips had entered into this arrangement and received this $1500, he entered into a

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contract with the South Park Commissioners to sell them the whole of the land, his own and that of Mrs. Phillips, for the sum of $800 an acre, which sum was not to be paid, however, to Phillips until he perfected the title to the farm in them.

A deed was made by Phillips to the South Park Commissioners of the land without his wife joining in it, but with full notice of her rights in the premises. Under this deed the commissioners took forcible possession of the land from the Kerrs, and the Kerrs on the 27th day of November, 1869, filed a bill in the United States Circuit Court for the Northern District of Illinois against the Park Commissioners to restrain them in their unlawful acts, and to restrain them from paying any money value to Phillips under the contract. This litigation commenced at this early date was not decided by the Supreme Court of the United States until the fall of 1879. During the interval between 1869 and 1879 testimony had been taken covering in foolscap 6,000 pages. A full argument had been heard before judge Drummond, who, after retaining the case a year or more, turned it over without deciding, to Mr. Justice Harlan, who heard it twice, once in Chicago and once in Washington. These hearings occupied several weeks. Many of the counsel who appeared in the case, as well as Kerr himself, are dead and gone. Messrs. Gookins, Goudy and Dunlevy appeared on behalf of the Kerrs, Messrs. Kayles, Fuller, Trumbull and Ingersoll on behalf of the South Park Commissioners and Phillips; and Robert Rae appeared on behalf of Mrs. Phillips. The issue to be tried was, whether Kerr, who levied upon and sold the farm, which was confessedly a homestead, got any sort of a title by reason of his failure to comply with the homestead laws providing for forced sales on execution. Kerr, however, denied that any homestead existed. Mrs. Phillips established her homestead right, and for such purpose called all the witnesses that were called on behalf of the South Park Commissioners. Mr. Justice Harlan held in delivering his opinion at the decision of the case, that Phillips had lost his homestead and that at the time of the sale by Kerr he had abandoned the homestead, but that as he had also abandoned his wife and children without cause,

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and as the wife had clung to the homestead and never deserted it, she had an independent right to assert her claim to it, and the law recognizing this right, would protect her against the acts of Kerr and of her husband. The result was that the court found that there was a homestead right in the tract occupied by Mrs. Phillips; that this right was coextensive with the 40 acre lot, and as that had been sold with the 40 north of it *in solido*, the sale being void as to the homestead land, was also void as to that which was sold with it without first eliminating the homestead right in the whole of the tract. The case was then appealed by the South Park Commissioners and by the Kerrs to the Supreme Court of the United States, and was represented on behalf of the South Park Commissioners by Melville W. Fuller, and Erastus S. Williams; on the part of Phillips by Robert G. Ingersoll, and on behalf of Mrs. Phillips by Robert Rae, and on behalf of Kerr, by Gen'l. Robert Schenck and Wm. C. Goudy. Mrs. Phillips again won, the court affirming by a divided court, the decree of the court below, and it was supposed that this was a final trial.

On August 31st, 1882, the South Park Commissioners filed what they called a bill of interpleader, claiming, however, to be the owner of the land under the Phillips deed of 1871, and denying that Mrs. Phillips had any right, title or interest, in the same. They also claimed that they had purchased it of Phillips at the sum of $800 an acre, and desired to pay for it that amount. Phillips appeared and denied the validity of the contract of sale of the farm at the sum of $800 an acre. Mrs. Phillips appeared and claimed that she was in equity the owner of the whole tract under the deed of trust made in 1852, and under the declaration of trust made by one Sweeney in 1875, Sweeney having become the grantee of Mr. Phillips in the winter of 1858 or 1859. Mr. Sweeney was then a young man residing in the City of New York He is now a middle-aged, wealthy and reputable citizen of New York, and was so at the time of giving his deposition, in which he testified that Phillips made a conveyance of the land to him in trust for the benefit of Mrs. Phillips, and that Phillips presented a deed to him which he said was a deed from Sweeney to Mrs. Phillips,

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of the property, but which deed Phillips either changed or suppressed and filed for record a deed purporting to come from Sweeney to Dr. Wright, her father. It is this litigation which Judge Tuley's decision covers, and the decision is so full that it does not require further statement as to the facts involved in the case. The counsel retained in this case were Melville W. Fuller for South Park Commissioners, Edsall, Hawley and Edsall, I. N. Stiles and Henry S. Monroe, for Phillips, and Robert Rae and John S. Miller for Mrs. Phillips.

JUDGE TULEY'S OPINION.

IN THE CIRCUIT COURT OF COOK COUNTY, AT THE NOVEMBER TERM, A. D. 1884

The South Park Commissioners
v.
Charles B. Phillips *et al.*

Decision by Judge Tuley, November 29, 1884.

GENTLEMEN: In the matter of the South Park Commissioners against Charles B. Phillips, I must apologize in advance for the length of the opinion, but as the case took several weeks to try, and there are several hundred printed pages of argument, the opinion is not very long probabiy in comparison.

This is a bill in the nature of a bill of interpleader filed by the Park Commissioners against the defendants, asking the court to determine which one or more of the defendants are entitled to the proceeds of the sale of the east half of the southwest quarter of section thirteen, town thirty-eight, north of range fourteen, east of the third principal meridian. This eighty acres is a part of the south fractional half of said section thirteen—about 196 acres—claimed to have been purchased by the Commissioners of Charles B. Phillips at $800 per acre, by contract of date December 10, 1869.

One Kerr claimed the title to the whole tract of 196 acres, through a sale on a judgment against Phillips; and after a litigation of several years in the United States courts, in which Phillips. his wife, the Park Commissioners and others were

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parties, succeeded in establishing his title to all except the eighty acres in question.

The defendant, C. B. Phillips, claims the eighty acres; denies making any contract to sell at $800 per acre, and claims that the Commissioners acquired the title through his procurement, upon an agreement to allow him the full value thereof.

Elizabeth Ann Phillips, the other principal defendant, wife of Charles B. Phillips, claims the equitable ownership of the entire eighty acres, by reason of certain promises to convey, improvements made on the strength thereof and certain alleged conveyances in trust as to the whole tract, formerly known as the "Phillips farm," made prior to 1863; and that in the event that it be found that she is not entitled to the whole of said eighty, she asks to be decreed entitled to that portion of the eighty which lies south of the north 103 acres of the said south fractional half of the said section thirteen, by virtue of a contract and settlement alleged to have been made between C. B. Phillips, her husband, on the one side and the defendant Atkins and Leaming & Thompson, on her behalf, on or about the 21st of August, 1868. And that she be decreed the full value of the land at the time she was dispossessed by the Park Commissioners in August, 1870.

The defendant Atkins claims part of the land under the contract last referred to; or that in any event he should be re-imbursed for moneys expended and services rendered on behalf of Elizabeth Ann Phillips.

The other defendants claim an interest in the proceeds of the land by deeds or assignments, of from one to five acres each, from C. B. Phillips or Mrs. Phillips.

The facts are more than usually complicated, and the legal questions raised are many and important. After a careful study of the evidence and the law of the case, I can do little more than announce my conclusions, which are as follows:

1. That there is no material variance between the contract of December 10, 1869, and that set out in the bill.

2. That contract was in substance that Phillips would perfect in the Park Commissioners, within a reasonable time, a good and indefeasible title to the south fractional half of said

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section thirteen, free and clear of all dower liens and adverse claims, for $800 per acre, to be paid as fast as the title to one or more acres should be so perfected.

At the time that Phillips made this contract with the Park Commissioners, he also made one with the firm of Beckwith, Ayer & Kales, who were then attorneys of the Park Board, to render their services in perfecting the title in the Park Commissioners for one-fourth of the amount that should be paid to Phillips.

It is contended by Phillips' solicitors that the latter contract having been made with the knowledge and consent of the commissioners, and at the same time as their contract with Phillips, both contracts are to be taken together and treated as one contract or agreement. And that so treating them, the agreement was champertous and void, as against public policy. I am of the opinion that the objection is not tenable. I cannot construe these contracts, treating them as one, into an agreement upon the part of the commissioners to pay the expenses of any litigation or of perfecting the title. The case of *The Commissioners v. Coleman*, 108 Ill. Rep., holding that to make a contract champertous it must be shown that the costs and expenses of the suit were to be borne by the champertee (meaning the champertor), settles the law in this State in that respect, whatever may be the decision in other States. The Supreme court of this State, in *Torrence v. Shedd*, 112 Ill., have again affirmed that doctrine, and have decidedly taken position with the line of decisions which follow Blackstone's definition of champerty.

Nor does the agreement come within the reason or spirit of the doctrine of champerty. It was no officious or speculative intermeddling in a suit or contemplated litigation which did not concern, or in which the commissioners had no interest, in consideration of a share of the land or a profit out of it. The land was in the designated limits of the South Park. It was the commissioners' official duty to acquire this land by purchase or condemnation, and as cheaply as possible. Having a duty to perform, the right to acquire the land arose. There being such a right, founded upon public duty, it cannot be said

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that they intermeddled in a suit, in the subject matter of which they had no interest.

Taking the two contracts together, I can discover no agreement of the commissioners to carry on any litigation for Phillips, nor authority to do so. They amount to this only: That Phillips agrees with the commissioners that he will perfect the title in the commissioners for $800 per acre to be paid as the title should be perfected. And Beckwith, Ayer & Kales agree with Phillips to aid him in so perfecting the title, for a quarter of the amount to be received. The board authorized the making of the first contract, but it is not pretended that there is any proof of any action by the park board as to the second contract. I see no impropriety in Beckwith, Ayer & Kales, having the consent of the commissioners, entering into this contract with Phillips. But the board had no power to take upon itself the duty or obligation of Beckwith, Ayer & Kales under their contract. The contracts, however well connected, must be held to be independent contracts so far as the rights and obligations of the respective parties thereto are concerned.

3. I cannot find any evidence of advantage taken, or undue influence, fraud, oppression or compulsion, nor proof of inadequacy of consideration, which would invalidate the contract. There is, however, *no such issue made by the pleadings*. Phillips denies making the contract. He does not confess it and seek to avoid it. It may be, if Beckwith, Ayer & Kales were seeking to enforce their contract, a court of equity might refuse to enforce it, or might cut down their fees to whatever sum their services rendered were reasonably worth. But that question is not in this case.

4. It is contended that this is a bill in the nature of a bill for the specific performance of the contract with Phillips; and that it would be inequitable to enforce it. I do not regard it as a bill of that nature. The commissioners do not pray that Phillips be decreed to perform; they ask no conveyance from Phillips or any of the defendants; they claim to have the title, and ask the court to decide to whom the money shall be paid. True, they ask that their title be confirmed; but if the prayer is too broad, it is no reason why they cannot have

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the relief to which they are entitled. Nor do I preceive why it would be inequitable to require Phillips, or his assigns, to take the money under this contract. As stated, I find no fraud or undue influence, overreaching or compulsion used as to the execution of the contract. There is no proof showing any gross inadequacy of consideration. He offered within a month previous to entering into this contract, to sell that land to the commissioners for a less sum per acre.

5. It is argued that Phillips was induced to enter into the two contracts because of the legal services to be rendered by Beckwith, Ayer & Kales And as that Beckwith and Ayer retired from the firm and the litigation before it was ended, it would be inequitable to require Phillips to carry out his contract. It may be that Phillips had a right to declare the contract with Beckwith, Ayer & Kales at an end for that reason; but he did not do so. Nor did he object to Kales continuing to render the services the firm had agreed to render. He stood by and permitted him to do so. It is true, he wished to bring other attorneys into the Kerr litigation, and that Kales objected; but Phillips appears to have acquiesced in Kales' objection. The commissioners are not to be held responsible for the failure of Beckwith and Ayer to render services under their contract with Phillips. That is between him and them. If the commissioners pay to Phillips, or his assignees, $800 per acre for every acre to which the title has been perfected in them they will perform their entire contract.

6. The land was within the park limits and it was the duty of the commissioners to acquire it. Although under no obligation to Phillips to do so, yet, if it was to the interest of the public, of which they were the judges, to employ attorneys to have the title of the land perfected in them under the contract of December 10, 1869, it was their duty to do so. They appear to have so considered and acted. From the moment the contract with Phillips was signed, his interest was the same as their interest. It was to have the title perfected in them. They had the right to have their attorneys represent both the commissioners and Phillips in all assaults of Kerr and others on the Phillips title. The attorneys were paid for their ser-

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vices out of the public funds; and so far as the evidence discloses, without any reference to the contract between Phillips and Beckwith, Ayer & Kales.

As the commissioners were under no legal obligation to furnish attorneys to perfect the title, no matter what were their obligations to the public so to do, the commissioners can have no advantage of the contract between Phillips and Beckwith, Ayer & Kales. They can not be subrogated to the law firm's rights, if any, under its contract with Phillips. They can make no charge for moneys voluntarily, and as I think, properly as an official duty, paid the board's attorneys in or about defending the title or claim of the board as to the land contracted for. The commissioners can therefore be credited only with moneys paid to Phillips, or his order, upon this contract. If the commissioners acquired the title to any of the lots in the subdivision of twenty-six acres at a less rate than $800 per acre, the amount paid Phillips, the amount will be credited upon the difference between the amounts paid and the $800 per acre. No expenses connected with the litigation will be charged to Phillips unless paid at his special request.

7. I therefore find the contract between the commissioners and Phillips, of December 10, 1869, good as against Phillips, and all claiming under him by deeds or assignments subsequent to said date; that the commissioners are entitled to, and have acquired whatever interest C. B. Phillips had in the eighty acres at that date, upon the payment of $800 per acre, less the amounts paid him or at his request as aforesaid. The taxes and redemptions should be charged to Phillips. The park board not having paid the money into court upon filing the bill, interest will be computed from that date.

As to Mrs. Phillips' claim, I find:

1st. That the title to the farm of about 196 acres was originally in C. B. Phillips, and purchased with his money.

2d. That although he may have intended to give Mrs. Phillips the farm for a family homestead, and often wrote and spoke of it as her farm, yet there is no sufficient evidence to show that he ever made her a deed of it.

3d. That there is no sufficient legal evidence that Phillips

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made the deed to Sweeney, in trust for Mrs. Phillips. The title rested but an instant in Sweeney; he was a mere conduit, and it can hardly be seriously contended that he could years thereafter, by a parol or written declaration, charge the land with a trust.

4th. The making of the deed by Phillips to Sweeney, and the deed of the latter to Thomas Wright, must be treated as part and parcel of one and the same transaction. Sweeney swears that he, Phillips, told him he was going to convey the property to his wife; and he, Sweeney, supposed he was making the deed to her. The deed it appears, in fact, ran to Thomas Wright, as grantee. Sweeney did not read the deed; and whatever Phillips may have told him, it must be presumed that Phillips at the last moment changed his mind, and concluded not to carry out his expressed intention, but to have the conveyance run to Wright. Neither Sweeney nor Mrs. Phillips can complain, as the intended act was voluntary on the part of Phillips.

I am of the opinion that the evidence shows that Phillips made the deed to Thomas Wright, not in trust for Mrs. Phillips, but as security for moneys advanced by Wright, and to be advanced, or to protect the property from his creditors; probably with a view to both objects.

5th. I find that Phillips, after the conveyance to Wright, was willing that Wright should convey the land to Mrs. Phillips; but Wright did not do so, preferring apparently to hold the title for his own security.

6th. That before any conveyance was made by Wright to Mrs. Phillips, he, Phillips, demanded a conveyance of the land, settled with Wright, and obtained a conveyance from Wright to Martin, for his, Phillips' own benefit.

7th. That Martin held the legal title, and made a deed to Burton, dated January 1, 1863, recorded June 5, 1863. If there was no such person as Charles P. Burton then living—which from the evidence I think is doubtful—this deed is void, as there can be no deed except there be a grantee *in esse*. In any event, the deed was never delivered, and is a void deed for that reason.

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8th. That Phillips, having the equitable estate in the land (the legal title being in Martin), conveyed to Atkins, by deed dated August 19, 1868; who on the 21st of the same month, but as a part of the same transaction, conveyed the north 103 acres back to Charles B. Phillips; the deed reciting it to be in trust for Charles P. Burton, but it was in fact in trust for himself.

I find that the part of the 196 acres not conveyed back to C. B. Phillips, was taken and held by Atkins in trust for Mrs. Elizabeth Ann Phillips. That she was entitled to all that remained after the payment of the costs and charges of her agent, Atkins, and her attorneys, Leaming & Thompson; all of whom I find sustained such a fiduciary relation toward Mrs. Phillips as would prevent them deriving any benefit, beyond that, to themselves.

9th. That Leaming & Thompson abandoned the performance of the services required under the contract of Phillips with them and Atkins. That the contract of Atkins with Mrs. Phillips with regard to his services and right in the land has expired by its own limitation. If it had not, the court would relieve against it, as having been obtained by undue influence. The cross-bill of Mrs. Phillips, having been taken as confessed by Leaming & Thompson, they can claim no interest in the land conveyed to Atkins, or its proceeds. Atkins by the abuse of his fiduciary relations, if not by the terms of his last contract, has forfeited all claims for his services. To be reimbursed for moneys actually expended is the only claim he can be heard to maintain in a court of equity. Mrs. Phillips is, therefore, the sole remaining beneficiary under the Phillips-Atkins contract.

10th. What was the contract and what interest did Mrs. Phillips, as the *cestui que use*, as the real party in interest, acquire under that contract? The contract purports to be between Burton and Phillips (Phillips now professing to act as Burton's attorney in fact) as parties of the first part, and Atkins, Leaming & Thompson, of the second part. After reciting the judgment by Kerr against Phillips, the sale thereunder, the sheriff's deed to Kerr, and that Burton and Phillips

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are desirous of having the sale set aside, witnesseth, that the parties, for the purpose of freeing the title to the land from the sale under the Kerr judgment, from Mrs. Phillips' right to dower and homestead, all taxes and assessments which are liens against Burton and Phillips' title, and for paying all costs, charges and expenses in the endeavor to free said premises from said liens, they agree that the land be divided into two tracts, one of the north 103 acres, the other of the balance of the tract. The second parties agree to use their best endeavor and skill, by the most speedy and thorough process of the law or otherwise, to free said title as aforesaid, so that the title to the north 103 acres shall be entirely unencumbered by said liens, and not to do or leave undone any act toward freeing the balance of the tract from the liens, and to pay first parties fifteen hundred dollars in satisfaction of their claims on the four Boyington notes. And for the agreements and undertakings of the second parties, the first parties agree to make the second parties a quit-claim deed, or deeds, to all the land, except the north 103 acres, the deed or deeds to be held in trust by Atkins, who was to be held responsible for injury sustained by a violation of the trust, the deed or deeds to be delivered to parties of the second part when they shall have accomplished their undertakings, and not until then. Then follows a provision in substance, that, if it becomes necessary to pay the judgment, the second parties to pay three-fourths and the first parties one-fourth, or that second parties may pay all and retain a lien on the north 103 acres for the one-quarter.

I do not construe this as a contract to clear this property from the Kerr judgment and sale, or from the enumerated liens. It is a very skillfully drawn contract, and drawn, it appears to me, with an evident intent to avoid any such construction. The second parties only agree to use their best skill and endeavors in the premises.

What are the rights then which have grown out of this contract? Looking at the transaction from the light thrown upon it by the history of Mr. and Mrs. Phillips' connection with this farm, viewing it in the light of the strong equities she had

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to claim a conveyance to her of the entire farm, moral if not legal equities, if such a distinction can be drawn; looking at the transaction in the strong light thrown upon it by the history of the then surrounding circumstances, I must regard the transaction as in the nature of a family settlement and adjustment of their claims to the land; as a division of it between them, Phillips to take the north 103 acres, she the balance, subject to the obligation that her agents and attorneys employed by her, should use their best skill and endeavors to clear the whole land from the Kerr sale and other liens. This is the view, evidently, that Phillips took of the matter at the time. In a letter written that same day, or the day the contract was signed with Atkins and Leaming & Thompson, he says: "I have in my pocket $1,500 received to-day on land sold. Suffice it to say, I have succeeded in carrying out my arrangements in Chicago. My complications at Chicago were this day settled. My earthly affairs are settled, etc." In this latter remark the evidence shows that he was very much mistaken.

This, I say, is the true construction to be given to, and is the spirit of the transaction; and, by the transaction I mean, not only the contract, but the contract as modified by the several deeds made in connection therewith.

It will be observed that the contract provided, in substance, that Phillips and Burton should make a deed, or deeds, to the second parties, Atkins, Leaming & Thompson, of all the land, excepting the north 103 acres, which deed, or deeds, should remain in Atkins' hands until the second parties had performed the contract upon their part. That in place of that having been done, Phillips and Burton made deeds to Atkins of the entire tract, the south fractional half of section thirteen, and Atkins deeded back to Phillips the north 103 acres thereof. In doing this the escrow condition, if it may be called such, was entirely done away with and waived. Phillips and Burton could only look to the covenants of the second parties, to use their best endeavors and skill in freeing the land from its liens, and other covenants contained in the contract.

In any event, if the contract had been carried out by the de-

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livery of the deeds that ran from the second parties to Atkins, the effect would have been the same; as a delivery cannot be made to a grantee in escrow. If it is, it takes effect immediately.

Phillips at that time was possessed of the entire equitable estate to the whole tract; that is, he owned the land, and had a right to call on the holder of the legal title, Martin, for a conveyance of such legal title. By his deed this entire equitable estate passed to Atkins, and by the deed of Atkins to Phillips the equitable estate of the north 103 acres passed back to Phillips, leaving the equitable estate as to the remainder in Atkins for the benefit of Mrs. Phillips.

11th. Phillips knew that Atkins and Leaming & Thompson acted for and represented his wife; Atkins, with his attorneys, had been for some time hunting him up in her interest. Her claims and her rights furnished the foundation for the contract, and in equity it should be treated as a contract and family settlement between him and her. Whether her equities were such as entitled her to a conveyance of the whole farm under the principles declared in *Warren v. Warren*, 103 Ill., or whether she had only a dower and a homestead, is immaterial. She had equities and interest sufficient to sustain such a settlement and division of the land. It was a settlement and adjustment as to which, certainly, C. B. Phillips had no right to complain.

As stated, the spirit of the agreement was that Atkins, as agent, or she herself, should furnish agents and attorneys, who should use their best skill and endeavors to clear the land from the Kerr judgment and other liens. Has this been done, and the contract substantially complied with on her part by herself or Atkins? It is true that Leaming and Thompson did withdraw from the litigation, but this fact should not be allowed to invalidate the contract. They are not even referred to as attorneys. Phillips consented to their withdrawal. He has not been injured by their so doing. His attempted declaration of forfeiture of the contract, contained in his deed to John Phillips, shows that he (Phillips) did not consider the contract as calling for the services specially of Leaming and Thomp-

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son. He says therein that Atkins had refused to employ competent attorneys. This was not true as a matter of fact. Atkins and Mrs. Phillips employed competent attorneys. There were Waite, Sansom, Barker and Rae, and I am of the opinion, from the evidence, that Phillips knew that they were rendering their services under this contract with Atkins made for his wife's benefit. For years, herself, and Atkins and her counsel have used their best skill and endeavors to free the entire land from the Kerr sale and other liens. They have given about all the legal services, skill, endeavor and attention that have been rendered, except that rendered by the attorneys of the Park Commissioners. It is not going too far to say that, except for the efforts of Mrs. Phillips, Atkins, her agent, and her attorneys, this eighty acres now in question, all that was saved, would probably never have been saved. It is owing principally to her efforts that there is anything now to litigate about.

I therefore find that the contract in question has been substantially complied with by Mrs. Phillips, her agents and attorneys.

12th. It is, however, contended that in 1869, about fifteen months after the contract was made with Atkins, Leaming and Thompson, Phillips made the deed to John Phillips, which contained a declaration of forfeiture of that contract, and that Atkins had notice of this deed; that notice to the trustee is notice to the *cestui que trust*. It is true Atkins says he heard of this deed, but he also says he told Phillips he ought not to do anything to prejudice the litigation he (Atkins) was carrying on. It cannot be contended that this tends to show that he knew it contained a declaration of forfeiture. It was not in the power of Phillips to forfeit the contract at will. His declaration as to the cause of the forfeiture, as to the neglect of the case and refusal to secure competent attorneys, is not sustained by the facts in evidence. No notice of forfeiture is proven to have been given Atkins or Mrs. Phillips. Phillips appears to have stood by for years and permitted Atkins and her attorneys to bear the burden of the litigation, knowing that it was claimed to be done under this contract. Nothing

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short of express notice of forfeiture, if the right to forfeit existed, should be held sufficient evidence of a declaration of forfeiture having been made. Under the circumstances he should have spoken directly and in no uncertain terms. Having failed to do so, he will not be allowed now to do so, and thereby reap the exclusive benefits of what was done by Mrs. Phillips and her agents and attorneys. I have no doubt, from the evidence, but that the Boyington notes were the property of Mrs. Phillips, and he, if he desired to forfeit the contract, should have paid back the $1,500 cash he received upon the execution of the contract, and in some manner acknowledged her right of dower, homestead and her equities, as they existed at the date of the contract. It is true that Phillips employed other attorneys. This he had a right to do; that he did so can make no difference, if the contract was substantially complied with by Mrs. Phillips and her attorneys, in pursuance of the contract. I cannot discover from the evidence how he has been injured by anything done or omitted to be done by Mrs. Phillips, her agents and attorneys.

I conclude that as between C. B. Phillips and his wife, Elizabeth Ann, she is entitled to so much of the said south fractional half of section thirteen as was south of the north 103 acres.

The next important question in this case is as to Mrs. Phillips' rights as against the park commissioners.

The commissioners claim through contract made with Phillips, to perfect title in them, dated December 10, 1869; by the Martin deed, of date March 30, 1870; by the deed of John Phillips, dated July 1, 1870 (C. B. Phillips had conveyed to John by deed June 18, 1869), and by the deed of C. B. Phillips, dated July 20, 1870. By the deed of Thomas Wright to Martin in the year 1863, for the use of Phillips, there was a complete separation of the legal and equitable estates in the land.

The rights of the commissioners and Mrs. Phillips, as connected with the equitable estate in the land, will be first considered. By the Phillips and Atkins agreement, and deeds connected therewith, the equitable estate or title, to the north

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103 acres of the tract was in C. B. Phillips, and, as to the remainder, the equitable estate was in Atkins for Mrs. Phillips' benefit. At the date of the commissioners' contract with Phillips, December 10, 1869, Atkins still held the equitable estate conveyed to him; and John Phillips held the equitable title to the north 103 acres in trust for C. B. Phillips. The commissioners took by their contract an equity, or equitable interest, as distinguished from an equitable estate, and took it subject to all equities and infirmities existing against C. B. Phillips' title.

Fisher v. Garst, 31 Illinois, 212; 14 Ill., 15; 56 Ill., 531.

As between a complete, perfected, equitable, estate, like that in Atkins, for her use, and the executory and imperfect equitable title acquired by the commissioners under the contract with Phillips, equity gives priority to the perfected equitable title, or, in other words, in the absence of the legal title the perfect equitable title by conveyance has priority over an imperfect one resting upon an executory contract.

Adams Eq., Sec. 148.

The commissioners, by the deeds of John Phillips and C. B. Phillips, both made in July, 1870, acquired their equitable interests. The deeds purported to convey the whole tract, but Phillips had conveyed the equitable estate to Atkins of that part south of the north 103 acres by deed dated August 21, 1868.

As to the rights resting upon these respective deeds (not regarding the Martin legal title, of which hereafter) the deed to Atkins, being prior in point of time, must prevail, under the well known rule that, as between successive conveyances of an equitable title, or, where the equities are equal, that which is prior in point of time has priority in equity. The recording acts could not, in this case, affect this well known rule, as the conveyance to Atkins was upon record before the two deeds referred to.

14th. The commissioners having acquired the legal title by a deed from Martin dated March 30, 1870, are they entitled to any priority over the Atkins title or Mrs. Phillips by reason

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thereof? I am of the opinion they are not, for the following reasons:

1st. Admitting which is by no means clear, that, where there are successive purchasers of an equitable estate, or that, where the equities are equal, the holder of the equity second in point of time may, in good faith, purchase an outstanding, dry or naked legal title, and thereby obtain a priority over the prior equity, yet, in this case, it could not be done, because the equity arising under an unrecorded executory contract, like that of December 10, 1869, cannot be held equal to that equitable estate held by Atkins by conveyance from Phillips. The commissioners were not *bona fide* purchasers for value of the Martin legal estate. The deed was procured by Phillips at a nominal consideration paid, or treated as paid, by Phillips, and was given to cure an alleged defect in a prior conveyance to Burton. This latter shows a want of good faith. There was neither value nor good faith.

2nd. Because the commissioners took by their contract with Phillips an equity subject to all its burdens, and among them an estoppel. Martin deeded to Burton, May, 1863; Burton by Phillips as attorney in fact, to Atkins, August 21, 1868. Phillips having acted as attorney in fact of Burton was estopped to deny that the legal title passed to Atkins by these two deeds. The two deeds were of record when Martin deeded to the commissioners. Bowen, who obtained the deed, had notice of Martin's deed to Burton. The commissioners, not being purchasers of Martin's title in good faith, and for value, and obtaining it in the manner they did, it appears to me, must be bound by an estoppel that bound Martin and Phillips. There is no purer equity than that of an estoppel.

3d. Because the commissioners had not paid, when they acquired the Martin title, the valuable consideration for the estate of Phillips. In fact, it is, as yet, almost wholly unpaid. The owner of an equitable estate or interest subsequent in point of time, but the valuable consideration for which has not been paid, has not such a complete equitable estate as will enable him to gain priority over a prior equitable estate by acquiring an outstanding legal estate. (Pom. Eq. Sec. 729.)

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If the commissioners entered into the contract without notice of the prior equitable estate in Atkins, and paid some money before getting notice thereof, it appears to me, that equity would require in this case that such moneys should be charged to Phillips and against that part of the eighty acres that he had the right to sell to the commissioners, to wit, that part contained in the north 103 acres of the whole tract.

Mann v. Flag, 2 Sumner's Reports, 564.

4th. For the reason, that whatever equitable estate, or interest, the park commissioners acquired from Phillips, they acquired the same with notice of the Atkins deeds and Mrs. Phillips' equities in connection therewith. He who takes an equitable estate or interest with notice of a prior equity, takes it burdened with such prior equity, which he cannot defeat by getting in an outstanding legal estate. The commissioners had notice by her letter of May 29, 1869, that she had a claim on the land, describing it, and that it was the land formerly occupied by C. B. Phillips and family. Also by the letter of November 8, 1869, that she had an interest in the Phillips homestead included in the designated limits of the park. That Atkins had her interest in charge, and that she referred to him for consultation. These letters were read in board meetings of the commissioners, were discussed and referred to the board's attorneys. Cornell, to whom they were addressed, swears that he stated to the board that in his opinion Mrs. Phillips' title was as good as Phillips', for which the commissioners were then negotiating. There is also evidence to show that while the negotiation was being carried on by Beckwith, Atkins consulted Beckwith as to the claims and interest he represented. The contract with Phillips, drawn in Beckwith's office, and interlined by him, contains peculiar language, which is also found in the Phillips-Atkins contract; rendering it probable that whoever drew the latter had seen the first contract. Bowen, when he obtained the Martin deed, was notified of the former conveyance of Martin to Burton; that deed, and also that of Burton by Phillips to Atkins, would have been discovered by an examination of the record. These facts

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coming to the knowledge of the commissioners, were sufficient to put them upon inquiry. This would have led to knowledge of the Atkins deed and of Mrs. Phillips' equities in connection therewith. This was equivalent to actual notice.

See *C. R. I. & P. R. R. v. Kennedy*, 70 Ill., 362.
Morris v. Hogle, 37 Ill., 150; and the leading case of *La Neve v. La Neve*, Leading cases in Equity, Vol. 2, Pt. 1, p. 35.

I am of the opinion also that there was record notice—constructive notice by the recording of the Phillips deed to Atkins on December 22, 1869, prior to the obtaining of the legal title from Martin. The contract with the commissioners is dated December 10, 1869. The legal title was obtained from Martin March, 30, 1870. On the 22d of December, 1869, the deed of Phillips to Atkins was put upon record.

While it is true that the purchaser of a legal title is not bound to look beyond the chain of title, yet he who contracts for the purchase of land with one holding only an equitable title, knowing that the legal title is outstanding, must ascertain before he completes the contract that the person he contracted with has made no conveyance of the equitable title which is of record. Phillips' title was purely an equitable one; but it was one he could sell or mortgage. This was known to the commissioners; and before they took the legal title from Martin by Phillips' procurement, they were bound to look to the record to see if there was any recorded conveyance at that time of Phillips' equitable title. The deed of Phillips to Atkins was then of record, while their contract was not. They had constructive notice of the deed.

7 Hun., 357; 67 N. Y., 437.

There was also constructive notice by the recital or reference to the Atkins contract contained in the deed of C. B. Phillips to John Phillips, recorded November 27, 1869. It is true that in the recital he does declare the contract had been forfeited, but an inquiry would have resulted in the knowledge that it had not been forfeited, and that Phillips, if he had the right

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to forfeit it, had not placed himself in a condition to do so, by restoring as near as he could the consideration received. The commissioners had no right to rely on Phillips' declaration that it was forfeited.

See *La Neve v. La Neve, ante.*

It is said, however, that inquiry would have led to knowledge that Mrs Phillips was entitled to only five or ten acres. I think it would have led to a knowledge of the Atkins deed; that she furnished the money consideration that was paid; that her equities and her rights were the real basis of the contract and consideration for the deed. That the Atkins-Phillips transaction was in fact a family settlement and arrangement between her and Phillips; that the land conveyed to Atkins was really held in trust for her, and that she had a right to repudiate the contract that Atkins had obtained from her because of undue influenee, if not fraud, in obtaining it.

However, it is immaterial now, who then possessed the rights and equities growing out of the Phillips contract with Atkins and her attorneys, as she is now the sole beneficiary under that contract and deed, and entitled to all the equities and rights growing out of the same, or out of notice thereof.

I cannot understand upon what theory it can be contended that Mrs. Phillips is bound by C. B. Phillips' contract with the park commissioners, either as to her interest in the land, or the amount to be paid therefor.

I have already decided that the park commissioners do not occupy the position of *bona fide* purchasers without notice; she has never ratified her husband's contract. She took possession in August, 1870, and was driven off by the park commissioners. She acquiesced only to the extent of permitting the commissioners to retain possession for park purposes. It is true, she has brought no suit to force a condemnation of the land. She must be held to have acquiesced in its being taken and improved for park purposes. It would not be equitable for her to have the benefit of its being improved and made more valuable; but it is not inequitable to decree her its value as of the date she was dispossessed.

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The cases cited by the attorney of the Park Commissioners, *Stone v. Pratt*, 80 Ill.; *Baldwin v. Sanger*, 70 Ill.; *Roberts v. Opp*, 56 Ill., are not, in my opinion, applicable.

By the testimony of George W. Waite, who was the engineer of the park board, that part of the eighty in question south of the north 103 acres, of the whole tract, comprised thirty-four seventeen one-hundredths acres, at the time she was dispossessed in August, 1870. She will be held entitled to that number of acres.

As to the alleged Indiana divorce of Phillips from his wife, it appears to me that in the light of the views announced, the validity of that divorce cuts no figure in this case. It is therefore unnecessary for me to pass upon the validity of the proceedings in the Indiana case.

The decree will provide for the submission to a jury of the question of the value of this land, so far as she is concerned, at the time she was dispossessed. The question as to interest need not now be passed upon.

Mr. M. W. FULLER: I think your Honor is laboring under an error about the dispossession. She undertook to get on that land in 1873, and they prevented her and put her off, and she departed. She was never in possession.

The COURT: It was in 1873 instead of 1870.

Mr. MILLER: 1873 instead of 1870.

Mr. FULLER: She undertook to get possession in 1873.

Mr. MILLER: It was August, 1873, instead of August 1870. It was three years later. Your Honor stated the month right.

Mr. FULLER: I claim she never was in possession. And in fluctuations of real estate here and the speculative values it is of importance.

The COURT: Gentlemen, I think it will make no difference in my views as to the matter. I think that her rights should be fixed as of the time that the Park Commissioners took possession, in any event, August, 1870.

Mr FULLER: Yes; that was August 27, 1870.

The COURT: August 27, 1870; and the decree will be so framed. I thought that the dates were one and the same the time that she was dispossessed and they attempted to take pos-

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session. There are several defendants. There is a deed by Phillips to Josephine M. Seeley of the north half of the fourth acre from the south end of the east half of the north-west quarter. All of these deeds, I believe, except the one to Rogers of three acres, describe a particular acre, numbering it from the south end or the south line of this east half. That portion appears to be decreed to Mrs. Phillips. I hardly know what effect shall be given to these deeds; but inasmuch as Mr. Phillips, by his cross-bill claims that they were in fact a *quasi* assignment of proceeds to be coming to him by reason of the sale to the park commissioners, and appears to be willing to let it stand as such, let it be treated as an assignment, and let it be treated as security for the amounts actually due. The decree will so provide. For instance that Mrs. Josephine M. Seeley, who had one acre—that it shall be referred to the master to ascertain what amount Phillips was owing to her or her husband for board; and that she be paid out of the proceeds that amount, provided it does not exceed the value of one acre, which was deeded to her, $800.

Mr. HAWLEY: If I recollect right, that happens to be half an acre to Seeley.

The COURT: A half acre, I mean. It shall not exceed $400. A like decree as to Robert G. Ingersoll as to one acre. A like decree as to Mr. McConnell, one acre; and a like decree as to the three acres deeded to Rogers. Well, that was only as security really for $500. The interest will be computed upon that. The McConnell deed was for professional services. The amount will be ascertained but shall not exceed $800. The Gates claim appears to be a direct assignment of the amount equal to this draft on whatever may be coming to Phillips from the Park Commissioners; and he will be allowed that out of the proceeds to be paid to Phillips with interest from the date of the order or draft.

With regard to the interest of Barker, who has a deed of two-tenths from Mrs. Phillips and Atkins; and the deed of two-tenths as made to Rae, and one-tenth also made to Rae—I suppose that Mrs. Phillips and those parties can settle that between themselves. But if necessary, the decree shall pro-

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vide that it shall be ascertained what their professional services were worth to Mrs. Phillips, rendered for Mrs. Phillips; and that these conveyances shall stand as security. A solicitor coming into a court of chancery will not be permitted to obtain what might be an unconscionable bargain from his client but he will be held limited, and hold the conveyance as security for the amount actually due.

I believe, gentlemen, that passes upon all the questions in this extremely lengthy case that have been made. Mr. Miller you can draw the decree.

Mr. MILLER: If your Honor please, upon this question of the date at which the value of the thirty-four acres shall be ascertained, we have not been heard upon that question. Colonel Rae, my associate, is not here this morning, and if upon consultation with him, we should think it advisable to present some views upon that question, would we be permitted to do so? Nothing has been said in argument, nothing I believe was said in the briefs, upon that question. Mr. Fuller has stated that there was no taking possession.

The COURT: I take this view of it. The evidence tends to show, and does show, that she knew that the Park Commissioners had taken possession of that property for park purposes; and she must be held to have acquiesced to that extent; and I think entitled only to the value of the land at the time that they took possession; that it came to her knowledge.

Mr. MILLER: She could not be held to have acquiesced at that time, and it would be a question when her acquiescence can be said to have taken place, and surely, her taking possession in August, 1873, her moving upon the premises, putting a house upon the premises, and her being violently dispossessed against her will, are evidences that she did not acquiesce.

The COURT: I think I will take no more time in this case. I will fix the time as of August 27, 1870.

Mr. MONROE: When the decree is prepared, then I suppose is time to take action.

The COURT; Oh yes, of course.

Mr. FULLER: Who is to prepare the decree?

The COURT: Messrs. Rae and Miller prepare the decree.

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Mr. MILLER: The decree will provide that the value shall be fixed by a jury to be empaneled in this court?

The COURT: Yes.

Appeal was taken from Judge Tuley's decision to the

SUPREME COURT OF ILLINOIS.

OPINION OF THE COURT.

CRAIG J. This was a bill in equity in the nature of a bill of interpleader brought by the South Park Commissioners against Charles B. Phillips, Elizabeth Ann Phillips and others.

The bill set up that the South Park Commissioners had acquired title to the east one-half of the south-west quarter of section 13, town 38, north, range 14, east, in Cook county; that under a contract with Chas. B. Phillips, dated December 10, 1869, the corporation had agreed to pay Phillips for the land $800 per acre, when a good title should be made for each acre; that in about February, 1859, the said premises were conveyed by said Charles B. Phillips and Elizabeth Ann Phillips, his wife, to Daniel S. Sweeney, and by Daniel S. Sweeney to Thomas Wright, and in June, 1863, by Thomas Wright to one David U. Martin.

That on or about the 30th day of March, A. D. 1870, said David U. Martin, then residing in the city and State of New York, and then and there holding the title to said premises, did, by his certain deed of that date, make conveyance to complainant for valuable consideration to him by complainant then and there paid, of the south fractional half of section 13, in township 38, north, range 14 east, which deed was duly recorded in Cook county April 5, 1870. That on the 1st day of July, 1870, one John Phillips, then and there claiming to have some interest in said premises, conveyed the same to complainant by deed duly recorded July 28, 1870. That on the 20th day of July, 1870, Charles B. Phillips conveyed the same premises to complainant, which deed was on the 28th day of July, 1870, duly recorded. That the conveyances aforesaid to

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complainant conveyed all and singular the beneficial rights and interests of the said Phillips and family of, in and to said premises, and for the consideration aforesaid, to wit: eight hundred dollars an acre; but such consideration was only to be paid for good and indefeasible title to said premises free and clear of incumbrances. That at the time of said conveyances there were divers clouds thereon, which had been thereon placed by one William P. Kerr, and which were shown of record in the county of Cook aforesaid, and that it was essential that said premises should be freed from said clouds before said sum of eight hundred dollars an acre should be paid.

That two certain bills of complaint were filed, involving the title to said south fractional half of said section 13, township 38, etc., by said William P. Kerr, in the United States Circuit court within and for the Northern district of Illinois, one against Wilson and others, November 27, 1869, and one against Phillips and others, Oct. 3, 1870; to the first-named of which complainant was made a party defendant September 26, 1870. That these two bills were finally consolidated and complainant answered the said bill, and such proceedings were thereafterwards taken in such suit as resulted, upon the 8th day of October, 1878, in a decree dismissing said bill as to the east half of the south-west quarter of said section 13, and thereby all right, title and interest of said William P. Kerr or his assigns, in said eighty acres last mentioned, were determined adversely to him and them; but as to the remainder of said premises the said decree was adverse to complainant's title derived as aforesaid, as will appear by reference to said decree.

That from said decree of said 8th day of October, 1878, an appeal was prayed by complainant to the United States Supreme court, and duly prosecuted therein, which resulted in the affirmance of said decree by said Supreme court. That the litigation as to the said eighty acres having been determined as aforesaid, complainant is now ready and willing to settle and pay therefor, at the said rate of eight hundred dollars per acre, as it has always been ready to do, upon title being perfected in the same or any acre thereof. But complainant says that by reason of the action of said Charles B.

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Phillips in making conveyances of said eighty acres, and of a controversy which has broken out between said Phillips and Elizabeth Ann Phillips, his wife, complainant has found it impossible to pay over the purchase price of said land with safety. The bill prays that defendants may set forth their claims and may interplead and settle and adjust their demands between themselves; and that complainant may be at liberty to bring and pay the said purchase price into court for the benefit of such of the defendants as shall appear entitled thereto. And that complainant's title to the eighty acres may be confirmed and established in complainant, and that complainant may have general relief.

The defendant, Chas. B. Phillips, denied the contract set up in the bill and filed a cross-bill claiming the value of the entire eighty acres. Elizabeth A. Phillips put in an answer and also filed a cross-bill. She denied that she was bound by the contract set up in the bill, and claimed first the entire eighty-acre tract under a trust created in her favor by Phillips in 1852; second in the event of a failure to establish title to the entire tract she claimed that part of the eighty acres which lies south of the north one hundred and three acres of fractional half of section 13, originally owned by Phillips, under an alleged family settlement made through one Atkins in August, 1868.

The decree of the Circuit court found that Mrs. Phillips was the owner in equity of the south thirty-four and seventeen one hundredths acres of the premises, and was entitled to be paid by the South Park Commissioners the value thereof upon the 27th day of August, 1870, when the park commissioners took possession thereof, with interest thereon from that time. And that Phillips was entitled to be paid for the balance, forty-five and eighty-three one-hundredths acres, the sum of $800 per acre, the amount fixed by a contract between Phillips and the park commissioners, under which the park commissioners claim, with interest thereon from the 27th day of August, 1870. And the decree also established the rights of the assignees of Phillips, Rawson, McConnell, Ingersoll, Sceley and Gates in the portion of the fund decreed to Phillips.

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From the decree so rendered Phillips has appealed, and assigned errors, which question the finding in favor of Mrs. Phillips and of the South Park Commissioners and of the intervening claimants, etc.

Mrs. Phillips assigned cross-errors in not being decreed the value of the whole eighty; in the awards to claimants under Phillips, etc.

The South Park Commissioners assigned cross-errors to the awarding of thirty-four and seventeen hundredths acres to Mrs. Phillips, the allowing of interest from August 27, 1870, etc.

The first question relied upon to reverse the decree is a variance between the contract set out in the bill and the contract put in evidence. The complainants produced on trial a contract executed December 10, 1869, by the South Park Commissioners and Phillips, which, in substance, provided that Phillips would perfect in the commissioners a good title to the south fractional half of Sec. 13, T. 38, N., R. 14, E. of 3d principal meridian, free and clear of all liens, for which they agreed to pay $800 per acre. It turned out, however, on the trial, that on the same date another agreement was executed by Phillips of the one part and Beckwith Ayer & Kales, of the other part, which refers to the other agreement, and provides that Beckwith, Ayer & Kales shall use their best endeavors and skill, by process of law and otherwise, to perfect the title to the land sold, in the South Park Commissioners according to the meaning of the contract, and to render their services to defend against all adverse claims, and Phillips agrees to pay for such services one-quarter of what he may be entitled to receive from the South Park Commissioners, which said quarter is assigned and transferred by Phillips to the attorneys. Conceding that the two agreements are to be treated as one transaction, as contended by counsel for appellant, there was no such variance between the proof and allegation of the bill as would lead to a reversal of the decree.

The object of the averments in the complainants' bill was to show that they had acquired the Phillips title for a stipulated price under a contract in writing executed by them and

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the said Phillips, and it is not perceived in what way the contract executed by and between Phillips and Beckwith, Ayer & Kales had any bearing on this question. This latter contract was a mere agreement for professional services, in which the service to be performed was stated and the price to be paid determined by the parties, and if it is regarded as a part of the contract set up in the bill it had such a remote bearing on the real point involved between Phillips and the South Park Commissioners that we think it might be put in evidence, although the bill contained no allegation in reference to it.

We fully recognize the rule that the allegations and proofs must agree, but there was here no such variance as to be regarded a violation of the rule. It is next urged that the contract is champertous and void, as against public policy. It is true that the land in question was in the possession of Kerr at the time the contract involved was entered into, and the contract provided that the litigation should be carried on, and Beckwith, Ayer & Kales were to render the professional services and were to secure one-fourth of what should be realized, for such services. If an agreement of this character entered into between attorney and client is champertous, then the point is well taken; but as we understand the law, the contract lacked one essential element to render it champertous, and that is, that the attorneys should prosecute the litigation at their own costs and expense. Had the contract provided that the attorneys should carry on the litigation for a share of what they might recover at their own cost and expense, then the contract might have been champertous and void.

Thompson v. Reynolds, 73 Ill., 11.
Park Com. v. Coleman, 108 Ill., 601.

Such, however, is not the case. The written contract which alone fixes and determines the rights and duties of the parties contains no provision whatever requiring the attorneys or the park commissioners to pay the costs or expenses of the litigation. The fact that the park commissioners may have advanced Phillips money which was used in the prosecution of the litigation had no bearing on the question.

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It is next claimed that this is a bill to enforce the specific performance of a contract, and the circumstances connected with its execution are such that a court of equity will not lend its aid to enforce the agreement. As we understand the record, the bill is not brought to enforce the specific performance of a contract. The park commissioners do not ask in their bill that Phillips or any of the defendants be required to convey the premises, on the other hand, they allege that they have acquired the title and are ready to pay, but desire a judicial determination in regard to the person or persons who may be entitled to receive the money. This is the scope and object of the bill, and it is apparent that it cannot be regarded as a bill for the specific performance of a contract. But if it was, we see nothing in the evidence to impeach or invalidate the contract unless all the evidence in the record should be disregarded except the testimony of Phillips and the case should be decided solely on his testimony.

During the summer and fall of 1869 Phillips made a number of propositions to sell the property to the South Park Commissioners, which culminated in the written contract of December 10, 1869, under which he was to receive $800 per acre. The original contract was not produced on the trial, as it had been destroyed in the great fire, but a photographic copy of Phillips' duplicate of the contract was produced and it was backed in his handwriting as follows: "State of Illinois, Cook county. South Park Commissioners' bond to Charles B. Phillips for 196 acres of land, more or less, at $800." Here is a solemn declaration in writing made by Phillips in confirmation of the contract he had executed, which does not indicate that he was to be paid for the land what it might be worth as he now contends. But this is not all; after the execution of the contract Phillips wrote the commissioners letters in which the contract is recognized. Indeed, after a careful consideration of the evidence, we are of the opinion that there is no room for saying that the contract was not fairly entered into or that the consideration was inadequate, and we see no reason why it should not be enforced so far as Phillips is concerned.

Much has been said in the argument in reference to the ac-

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tion of Beckwith, Ayer & Kales in the matter, but we see nothing wrong in what they did or omitted to do. They were attorneys for the South Park Commissioners, but as there was no conflict between Phillips and the commissioners, so far as the title of Phillips was concerned, both being interested in sustaining his title and defeating all adverse claims, there was no impropriety in Beckwith, Ayer & Kales acting for both Phillips and the commissioners in the defense of the Kerr case or any other litigation involving the validity of the Phillips title to the premises in dispute. But it is said that Phillips contracted for the services of the three members of the firm and that Beckwith and Ayer did nothing in the case. It does not appear, however, that Phillips was in any manner injured from this cause or that his suit was not properly attended to. Mr. Kales had the management of the case, and so far as appears did all that was necessary to be done, or all that could have been done had the other members of the firm given the matter their personal attention, and we perceive no good ground of complaint on this score.

We now come to the claim of Elizabeth A. Phillips to the property. In her cross-bill she asserts title to the entire eighty-acre tract, and in the argument it is claimed that if the evidence is insufficient to sustain the claim, then she is entitled to hold the south 34 and 17 one hundredths acres awarded her by the decree of the Circuit court under an agreement that was made in August, 1868. For the purpose of establishing the claim first made to the property reliance is placed upon a supposed deed of trust from Chas. B. Phillips to Dr. Thomas Wright in 1852, and as evidence of such a deed, an endorsement in the handwriting of Phillips on a certain will which he executed in 1851 is produced, to the effect that he had made a deed of trust to Wright for the benefit of his wife, also a letter written in 1852 by Phillips, in which he says: "I have concluded to give Lizzie a deed of my farm, 200 acres on the lake shore. * * I shall give her a deed this day, etc."

Other letters of Phillips were read in evidence in which he refers to the farm as belonging to his wife. In connection with this, Mrs. Phillips testifies to residing on the farm,

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cultivating and improving it for some ten or twelve years until the home was destroyed by fire. We do not regard the evidence sufficient to establish a settlement of the property in Mrs. Phillips. No deed of trust was produced, nor was it shown that such an instrument was ever seen by any witness, and the acts and declarations of Mrs. Phillips are totally inconsistent with the theory now set up that the property was settled on her.

Her possession of the property with her family was such as a wife would ordinarily have of the husband's estate. In a letter to Mr. Kerr in 1867, she speaks of the property as her husband's, and says: "I have on several occasions tried to persuade Mr. Phillips to allow you a sufficient portion of this place at the market price to satisfy your claim, and he has often refused." In 1863, in a letter to her husband, among other things she says: "I received a letter from Geo. Waite informing me that everything was being stolen off your farm near Chicago." In the same letter she alludes to the fact that the property had been held by her father, Dr. Wright, as security for money advanced, but deeded back as soon as the advances were paid. The Witness Cornell testifies that in 1868, when he was trying to aid Mrs. Phillips to secure her rights, the only claim made was that of dower and homestead.

Dr. Wright testified that he held the property to secure money advanced to Phillips, and when they settled, in June, 1863, he conveyed to Martin, at Phillips' request. Martin testified that he received the title in trust for Phillips, and conveyed to the park commissioners at Phillips' request. Indeed, it was never understood by any one who had any dealing with Phillips and his wife in regard to the property, that she was owner; on the other hand, the property as always treated as belonging to Phillips by the wife and all who had any connection with it. It may be that Phillips expected at some time to convey the property to his wife, and his loose declarations may be regarded as evidence of such an intention, but the evidence is not sufficient to show that the intention was carried out.

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On the 4th day of January, 1859, Phillips conveyed the property in question to one Sweeney. Mrs. Phillips joined in the execution of the deed. On the same day Sweeney conveyed to Wright. Both deeds were executed at the same time, and as soon as the title passed into Sweeney by one deed, it passed out by the other. It is claimed that the conveyance to Sweeney was in trust for Mrs. Phillips. Neither of the deeds contained evidence of the trust, nor was any writing produced to establish such fact, as required by the statute of frauds.

The ninth section of statute of frauds (Ch. 59, Rev. Stat. p. 574), provides:

"All declarations or creations of trusts, or confidences of any lands, tenements or hereditaments shall be manifested and proved by some writing signed by the party who is by law enabled to declare such trust, or by his last will in writing; or else they shall be utterly void and of no effect: Provided, that resulting trust or trusts created by construction, implication or operation of law, need not be in writing, and the same may be proved by parol."

This is not claimed to be a resulting trust or one created by construction, implication or operation of law. It would therefore seem to fall within the terms of the statute and can only be proved by some writing. It was not essential that the trust should be declared in the deed; it might be manifested by any writing showing a manifest intention that the property was conveyed in trust. If Sweeney, while holding the title to the land, had made a declaration that he held in trust, by letter, affidavit, answer in chancery, or even by deposition, such declaration might have been binding upon him, and a sufficient manifestation in writing to establish the trust, but no such evidence appears. It is contended that a deposition of Sweeney, taken eighteen years after he had conveyed the property by an absolute deed to Wright, may be regarded as proof in writing to establish the trust.

After Sweeney had divested himself of all interest in the property by the execution of an absolute deed, any subsequent declaration that he might make could not affect the title. Brown on Frauds, sec. 106; Hill on Trustees, 61, 2; *Turney*

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v. Wood, 19 Beavan, 330; Perry on Trusts, sec. 77. If, while Sweeney held the title to the property in his own name, the question was whether he was absolute owner or held in trust, then his subsequent acknowledgment by letter, by answer in chancery, or by his deposition, might be regarded as sufficient to establish the trust. Perry on Trusts, sec. 82, and Notes. But such is not the case.

Reliance is, however, placed upon a deposition of Sweeney taken eighteen years after he had conveyed, to the effect that the property was conveyed to him in trust for Mrs. Phillips and that he supposed at the time that the deed he executed conveyed the property to her. If, however, it should be admitted that this evidence was competent to establish a trust, which we do not, the force and effect of the evidence is overcome by the fact that Sweeney actually conveyed to Wright, and it is clear from the evidence of Phillips, of Wright, and of Mrs. Phillips, that the property was conveyed to Wright not in trust for her, but for the purpose of securing him for money which he had advanced to Phillips. The evidence in the record clearly preponderates in favor of this view of the conveyance and entirely overcomes the proof relied upon to establish a trust.

On the trial Mrs. Phillips put in evidence a deed of the premises from Thos. Wright to his son John E. Wright, dated October 9, 1861, and a deed from John E. to herself dated October 3, 1878, both recorded October 3, 1878, and in the argument reliance is placed on these conveyances. Thomas Wright, as appears from his evidence, held the title as security for money which he had advanced to Phillips. On the 2d day of June, 1863, a settlement was made between Phillips and Wright, when the latter was paid in full and on that date he conveyed the premises to Martin, who recorded his deed June 5, 1863. This deed, having been taken and recorded without notice of the prior conveyance made by Wright to his son, will take priority. But as, aside from this, Mrs. Phillips knew, as shown by her letters and her deposition, that Thos. Wright held the title as security for money due from her husband, she could not in a court of equity profit by a convey-

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ance from her father. After the debt had been paid and discharged Wright held as a mere trustee, and was bound to convey to Phillips or to such person as he might direct. A conveyance by Wright to his son without consideration in violation of his obligation conferred no superior equities on Mrs. Phillips.

We now come to that part of the decree in which the title to thirty-four and seventeen one-hundredths acres of the eighty-acre tract is confirmed in Mrs. Phillips. This part of the decree is challenged by both Phillips and the South Park Commissioners. It appears from the record that Kerr, September 3, 1866, had obtained a judgment in ejectment against Charles P. Burton and one Blackwell, under which he had obtained possession of the entire Phillips tract of land, consisting of 196 acres. This judgment was obtained by default, and under the statute then in force would become absolute upon the expiration of two years, September 3, 1868. In August, 1868, Mrs. Phillips saw the situation of affairs and undertook the recovery of the premises. She engaged Atkins, Cornell and Leaming & Thompson to assist her.

Phillips, who was then in New York, was induced to come to Chicago, and after some negotiations an arrangement was consummated and an agreement in writing executed, bearing date August 21, 1868. This contract was made between Chas. P. Burton by Chas. B. Phillips, his attorney in fact, and Chas. B. Phillips, parties of the first part, and Chas. H. Atkins and Leaming & Thompson, parties of the second part, under which the land was to be divided by an east and west line so as to cut off 103 acres north of the line, and the parties of the second part agreed to use their best endeavors and skill to free the title of said premises and pay the parties of the first part $1,500, and the party of the first part agreed to convey to second party all the land except the 103 acres, the deed to be held by Atkins to be delivered to party of second part upon completion of their undertaking. For some reason this agreement was not strictly adhered to. But a deed was executed by Phillips and his wife, dated August 19, 1868, to Atkins, for the whole tract and on August 21, 1868, by Chas. P. Burton by Phillips,

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his attorney, to Chas. H. Atkins. On the same date Atkins conveyed by deed to Phillips in trust for Burton the north 103 acres.

The deed to Atkins was recorded September 5, 1868. The $1,500 paid Phillips came from Mrs. Phillips, the larger portion of which came from certain notes she held on Boyington; the balance she raised from other sources. The Boyington notes were executed originally to Phillips for certain lots he had sold, but in 1863, he gave the notes to his wife. After the execution of this agreement Atkins and Leaming & Thompson commenced proceedings against the Kerr title.

They entered a motion in court to vacate the judgment, supported by affidavits of Phillips, Atkins and Mrs. Phillips and others. Phillips filed an affidavit, in which he set up that he was the sole agent of Burton, who resided in California; that neither Burton nor himself had any knowledge of the action of ejectment; that he was sole agent of Burton, who had a full defense to the action.

Efforts were made by the attorneys of Kerr to find Burton, but no such man could be found; the court thereupon gave Phillips six months to find Burton, and upon the expiration of six months, Phillips having failed to produce his man, the court overruled the motion.

At this stage of the proceeding, Phillips became dissatisfied with Leaming & Thompson, and they, no doubt on account of his inability to produce Burton, became dissatisfied with him; they withdrew from the case. Subsequently, Atkins and Mrs. Phillips employed Sansom and afterward Barker, and Rae; the evidence was procured, and a trial had in the Circuit court of the United States for the Northern district of Illinois, in the case of *Kerr v. South Park Commissioners and others*, and eighty acres of the land recovered.

It is clear from the evidence, that the recovery of this land was due to the efforts of Mrs. Phillips and Atkins, who acted for her, and her attorneys, in connection with the services rendered by the attorney of the South Park Commissioners. It is true that Leaming & Thompson withdrew from the case, but at the instance of Mrs. Phillips others took their place,

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and all has been done that was agreed to be done, to free the land from the Kerr title.

Under such circumstances, is Mrs. Phillips entitled to protection in a court of equity, or shall the land recovered from Kerr all go to Phillips? That the contract which was entered into with Phillips was made for the benefit of Mrs. Phillips is beyond question. Leaming & Thompson claim nothing under it; Atkins interposes no claim, but admitted of record, under oath, that he held under the deed from Phillips in trust for Mrs. Phillips. She, and she alone, it is clear from the evidence, is entitled to the benefits of the contract of August 21, 1868, and the deeds executed in pursuance of that contract. It is urged that when Leaming & Thompson withdrew from the case, Phillips forfeited the contract, but this he had no right to do; in no event could he retain the $1,500 which he had received under the contract, and at the same time declare a forfeiture.

If he had any right of forfeiture whatever, which it is not necessary here to determine, he could only exercise such right by restoring the parties to the position they occupied when the contract was made.

It is apparent, too, that Phillips knew that the contract was made for the benefit of Mrs. Phillips. The evidence is ample on this point. It is shown by the evidence of Atkins and Cornell, as well as the letters of Phillips himself. The contract of August, 1868, and the deeds executed in pursuance of that contract, under which Mrs. Phillips derived title were executed prior to the contract which Phillips made with the South Park Commissioners, under which they claim title, and it was proven by the evidence that the commissioners had actual notice that Mrs. Phillips claimed the land when they entered into contract with Phillips in 1869. As the commissioners, therefore, had notice of facts sufficient to put them on inquiry at the time they contracted with Phillips as to Mrs. Phillips' rights in the property, the lands allotted to her are not, as was held by the Circuit court, affected by the contract made between Phillips and the commissioners.

The court allowed interest on the amount decreed Mrs. Phil-

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lips from the 27th day of August, 1870, the time when the commissioners took possession of the land, and this is relied upon as error.

Lands cannot be taken and appropriated to public use without just compensation is made to the owner. And we think our law of eminent domain requires the payment of the compensation or a tender or deposit of the same with the county treasurer before possession of the land shall be taken. This seems manifest from section 10 of the eminent domain act, which, in substance, provides that when the report of a jury is brought in the court or judge shall make such order as to right and justice shall pertain, ordering that petitioner enter upon such property and the use of the same upon payment of full compensation as ascertained as aforesaid.

The payment of the compensation or the deposit of the same seems to be a condition precedent to the taking possession.

When, therefore, the possession of the land is taken the compensation is due, and if due and payable, it in justice ought to draw interest from that time. Here the South Park Commissioners went into the possession of the land on the 27th day of August, 1870, and they have had the use of the property ever since, and have also had the use of the money which represents the property, although it was due to the owner when they took possession.

It is neither equitable nor right that they should have the use of the land and of the money, but as they have had the land and withheld the payment of money, they should be required to pay interest thereon, as ruled in the Circuit court, *Seldon v. Jones*, 6 Rand, 465; *Del. R. R. Co., v. Brusen*, 61 Pa. St., 369; *R. R. v. Gesner*, 20 Pa., 240.

Counsel for Phillips finds fault with the decree protecting the rights of certain intervening petitioners, who claim rights in certain distinct parcels of the premises through Phillips, for money severally due them from him. Without entering upon a discussion of this part of the decree, we will merely add that we see no objection to it. Indeed, the whole decree, after a laborious examination of a voluminous record, and a

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lengthy argument, we regard as equitable and one which settles the rights of the various parties, as nearly in accordance with justice and right as could be expected where there are so many conflicting interests and diversity of claims. The decree of the Circuit court will therefore be affirmed

Affirmed.

Subsequent Proceedings.

It will be seen by the opinion of the Supreme Court of Illinois, affirming the decision of Judge Tuley, that a jury was to be impanelled to assess the amount of compensation to be paid Mrs. Phillips for the land which had been decided to be hers. Before the jury was called, an effort was made to settle the matter in open court, and it was arranged by counsel on each side and by Mr. Russell, who was one of the park commissioners, speaking for himself though not authoritatively for the board, that the commissioners would give and that Mrs. Phillips would accept $110,000 in cash This arrangement was not confirmed by the park board, and Judge Tuley proceeded to assess the amount to be paid Mrs. Phillips, a jury being waived by both parties.

A number of witnesses were sworn, whose testimony varied all the way from a few hundred dollars to six thousand dollars per acre. The cause of such a wide variation is to be found in the fact that the value was largely a speculative one, in the year 1870, the time designated by the court, as that at which the value was to be ascertained. Among other elements of value which, according to the decision of the Supreme Court in another case, could be considered, were, the growth and prospects of towns and cities, and the purposes for which the property could be used. Those who fixed a high price upon the land, considered the growth and prospects of Chicago and of Hyde Park in particular, and the use that could be made of the land for a park, the tract in question being in the center of that part of the great South Park which is called Jackson Park. Those who placed a low price upon it looked more at its intrinsic value and at the fact that much of this particular tract was low and swampy.

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The court found $1,620 per acre as the value, on the 27th of August, 1870, when the park commissioners took possession; making $55,355.40; amounting with interest at 6 per ct. per annum to May 23, 1887, the date of the finding, to $110,941.18.

The park commissioners took an appeal to the Supreme Court of the State.

The decision of Justice Harlan, of the Circuit Court of the United States, alluded to in the preliminary statement of this case, will be found in the 8th vol. of Bissell's Reports, commencing at page 276.

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THE MEDICO-LEGAL DEPARTMENT.

We are in the receipt of the Medico-Legal Journal, edited by Clark Bell, Esq., New York. This is a reliable authority on those questions that lie along the border line between law and medicine.

The able paper of the editor, who is also the President of the Medico-Legal Society of New York, read before that society recently, on "INSANITY, and the care of the Insane," is worthy of a careful perusal by every well wisher of the race.

Mr. Bell has collated opinions and decisions which would require many days of weary research. We would be glad to make more lengthy extracts, did our space permit.

"Dr. George M. Beard: "Insanity—is a disease of the brain, in which mental co-ordination is seriously impaired." "Dr. Henry P. Stearns: "Insanity—for Medico-Legal purposes, is an incapacitating derangement of the mind caused by disease."

LORD CHIEF JUSTICE COCKBURN says: "As the law, as expounded by the Judges in the House of Lords, now stands, it is only when mental disease produces incapacity to distinguish between right and wrong, that immunity from the penal consequences of crime is admitted. The present bill introduces a new element, the absence of the power of self-control.

"I concur most cordially in the proposed alteration of the law, having been always strongly of opinion that, as the pathology of insanity abundantly establishes, there are forms of mental disease in which, though the patient is quite aware he is about to do wrong, the will becomes overpowered by the force of irresistible impulse; the power of self-control when destroyed or suspended by mental disease becomes, I think, an essential element of responsibility.

"Sir James Stephen proposes that a jury should be allowed to return three verdicts—(1) Guilty; (2) Guilty, but the power of his self-control was diminished by insanity; (3) Not Guilty, on the ground of insanity."

THE MEDICO-LEGAL SOCIETY OF CHICAGO has over one hundred members. This society is already a power for good in our city. Medical jurisprudence should command the careful attention of the best minds in both professions. The field is a most important one, hitherto much neglected. We bespeak for the Medico-Legal Society of Chicago a great future.

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EDITORIAL NOTES.

DR. MCGLYNN AND LAND REFORM.—There is room for reform in the law by which real estate is held and conveyed in this country. The origin of private titles to unoccupied land is also subject to some criticism. But Dr. McGlynn is quite in error in at least one of his fundamental positions, while he fails to show, with any degree of clearness, how his theory is to be carried into practice, without violating the very principles of justice for which he is contending.

The fundamental error alluded to consists in the statement that "the idea of property comes only to men from the idea of making, from the idea of producing."

That is not by any means the sole idea connected with the origin of property. One of the most familiar illustrations used by writers upon this subject, is the appropriation by the savage, of the ground covered by the shade of a tree in the heat of summer. It is generally conceded that the one who takes possession in such case, acquires a property in the ground thus occupied, and this illustration is sometimes used in support of the doctrine that possession is the basis of the right to real estate. But what idea of making or of producing is involved in such appropriation? It will be seen that ideas of comfort and enjoyment, and especially the idea of self-protection are also to be considered.

This error in his premises vitiates to some extent all of his conclusions. Besides which, he fails to show how the artificial value of the land, caused by adventitious circumstances, and which he claims belongs to the community, is to be distinguished from that value which has been given to it by the owner and his grantors.

There is a kernel of truth in the views of Dr. McGlynn, but the truth is so enveloped in error as to lose all practical value.

SPECULATION IN GRAIN.—It is to be regretted that the Legislature at its late session, failed to pass the bill introduced for the purpose of preventing speculative grain contracts. The provisions of the bill were wise and salutary, forbidding the buying or selling of grain not reduced to possession, and requiring in all cases ware-house receipts to be produced as evidence of such possession.

The law now in force, Starr and Curtis's Annotated Statutes, p. 791, sec. 178, makes it a criminal offense to deal in options in grain or other commodity, gold or railroad stock, or corner the market or attempt to do so, in relation to any such commodities; but we do not learn that much effort is made to enforce the law.

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NOTES OF TRAVEL.

VOYAGE TO THE NORTH CAPE—LAND OF THE MIDNIGHT SUN.

On the 7th of June, 1885, I took passage at Christiansand, on the South-west coast of Norway, in the steamer Nordland, bound for the North Cape. The more usual and the better course for those who have not abundance of time on their hands, is to go by sea to Christiania, thence by rail to Throndhjem, and there take a vessel for the Cape.

At 10 P. M. we made our first landing which was at Egersund, 88 miles from Christiansand, and in the night stopped at Stavanger, 56 miles further. At 4 P. M. on the 8th, reached Bergen, where we remained 32 hours. This is a city of 45,000 inhabitants. About midnight of the 10th of June, we left Bergen. The next day, passed some very bold mountain scenery. The weather was cold, and we were for a while in a rough sea, but soon were quietly sailing along, inside the chain of islands which protect the voyager most of the way to the Cape.

June 11, arrived at Christiansund at 11 A. M., and in the evening at Throndhjem, a city of 30,000 inhabitants. Here we remained a day and a half. Sailing from Throndhjem on the 13th, we passed interesting mountain scenery. The mountains are not very high. The highest would not much exceed 3,000 feet, but they have a wild grandeur which gives them an imposing appearance. The mountain tops are much of the time covered with mist, leaving the imagination to picture them much higher than they are. Though it is cold and cloudy most of the time, there is something fascinating about the scenery and the surroundings, and the almost constant day. There is now scarcely any night at all. The day-light and twilight of to-day will last until midnight, and then the day-light and twilight of to-morrow will commence.

Soon after noon on the 15th of June, it became warmer, the sun shining brightly, which, for some days had been quite an uncommon occurrence. About 1 P. M. we crossed the Arctic Circle. We now knew that we were within range of the midnight sun, but did not expect to see it until the next day. Precisely at 12 o'clock, however, old Sol made his debut as promptly as if his appearance had been previously announced in the bills.

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There he was, due north, on the horizon, between the mountains, somewhat shorn of his splendor, and resting quietly, as if to take his bearings and distances before resuming his course.

We were at Bodœ, a place of about 2,400 inhabitants. The air was now clear and transparent, and all around the mountains rose in resplendent beauty, quiet and majestic spectators of the scene.

Tuesday, June 16. This has been a glorious day—the atmosphere clear and radiant—the sun shining mildly and steadily; his benign warmth being only the more grateful in contrast with the cold, cloudy and drizzly days which we had experienced—the sea calm and beautiful—the mountains rising in constant succession on every side, of every size and every shape, differing in everything except that all are of the everlasting granite—all standing there, grand, monumental witnesses of the ever constant, ever mysterious passage of the future into the past. The steamer was pursuing its winding way, among rocks and islands, stopping here and there to leave freight and passengers at coast settlements consisting each of some dozen or two of newly painted buildings. Many of the highest mountains were covered with snow. We passed to-day, the Luffoden Mountains, many of which have snow-covered summits.

Wednesday, June 17. Last evening we stopped at Stokmarknæs, where they were preparing for a fair, such as is annually held in these regions. There were a large number of small boats ready made to sell at the fair. This has been another splendid day. Toward evening, when some of the distant snow-covered mountains to the eastward, were lighted up, not by the setting sun, for it does not set any more, but by the sun near the horizon, the view was extremely beautiful. We are now at Tromsœ, a handsome town of over 5,000 inhabitants, in the midst of a country so much more productive than anything we have lately passed, that it can almost be called agricultural. At 12 o'clock, when it would have been midnight, were there any night, the sun was plainly to be seen a little above the horizon.

Tuesday, June 18. The weather beautiful again, and not so cold. The mountains become more rocky—more destitute of vegetation. In the evening we came to Hammerfest, the northernmost town in the world. It is a place of about 2,500 inhabitants, built at the base of a mountain. It is nearly a hundred years old, though most of it has been built within the last 50 years. We were now near the Cape, and pushed on while the sea was quiet, for it is often very rough in this latitude, and here it is necessary to leave the chain of islands which have so long protected the vessel, and to put out into the open sea. On the way we passed a shore rising abruptly and perpendicularly to a great height, and on the rocks, all the way down, from the summit to the sea level, there was an immense number of sea-gulls, flying about, and making a noise which was plainly heard from the vessel. Here the whistle was sounded repeatedly, and cannon discharged several times in order to raise the echoes from the rocky shore, which were grand beyond description.

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We now passed into the open sea. There was scarcely any motion of the waves, and we sailed smoothly along, past the place where a vessel was wrecked last year. Soon a dark, rugged, high, rocky cliff began to show its head, above the intervening rocks. We soon turned the point,

"And then uprose before me,
Upon the water's edge,
The huge and haggard shape,
Of that unknown North Cape,
Whose form is like a wedge."

About ½ past nine o'clock of what would have been evening in other latitudes, we were passing the North Cape; its abrupt and rugged front rising before us, to the height of 970 feet. Sailing a little past it, the vessel was brought into a sort of cove and anchored, and we were rowed ashore in a small boat. I had been told I could not go to the top, as the the ascent was very difficult, and the path by which it was usually made was now covered with deep snow. By availing myself, in some of the steepest places, of the aid of iron stakes which had been driven into the ground when King Oscar made the ascent in 1873, I succeeded in gaining the first summit. From this point there was a gradual ascent for some distance, to the monument erected by Oscar.

It consisted of a plain, handsome, granite obelisk, of four sides, upon a base of rough, granite rock. It contained the following inscription:

"King Oscar II besteg Nordkap, d. 2 Juli, 1873."

[King Oscar II ascended the North Cape, July 2, 1873.]

From the monument I had a magnificent view of the sea, stretching out, like a floor of glass, in nearly every direction, while the sun was struggling to escape from clouds which were veiling its midnight lustre. To the right was a continuation of the rocky shore, extending far out into the sea, and opposite that, in the distance, with a portion of the sea intervening, was a row of hills or mountainous islands, lighted up by the sunlight behind the clouds.

We left the Cape at 1 o'clock on Friday morning, the 19th of June, retracing our course through the quiet North Sea to Hammerfest, where we arrived about the middle of the forenoon. There are four languages spoken at Hammerfest; the Norsk, (Norwegian), the Svensk, (Swedish), the Finsk, (Norwegian Laplandish), and the Kvensk, (Russian Laplandish.)

At this time, 10 o'clock in the evening, the sun is shining out brightly, as we are pursuing our voyage.

Saturday, June 20. We are quietly and steadily retracing our course. Much of the mountain scenery is recognized as soon as it comes into view. Though it has lost somewhat of its novelty, it has by no means lost its beauty or its interest. Arrived this morning at Tromsœ. During the night, when I awoke, I saw the sun shining brightly.

On the 21st we arrived at Stokmarknæs, where they were preparing for their annual fair which is to commence to-morrow. A principle attrac-

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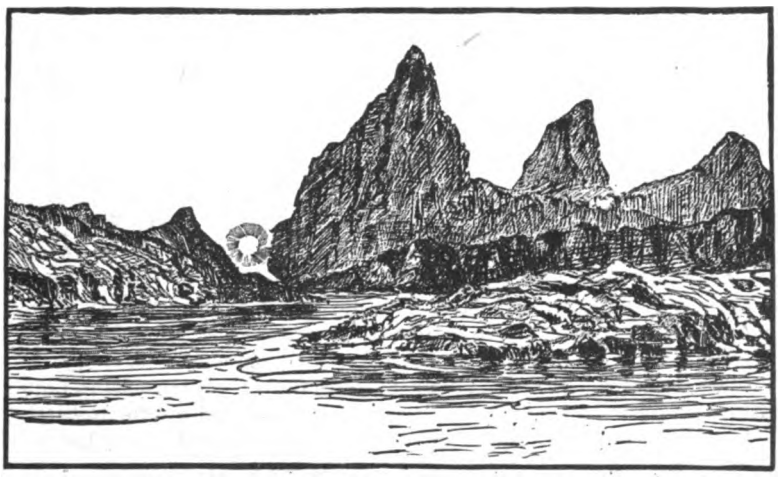
tion consisted of the boats before mentioned. They were of all sizes and prices from 50 kronors up to 600. They were all or nearly all entirely new, and presented a very picturesque appearance, as they were ranged along in the water and on the shore.

In the evening we came to Bodœ. As this was within the Arctic Zone still, and was moreover the place where we first saw the midnight sun, we had strong hopes of having a repetition of the phenomenon. These hopes were strengthened by the fact that the sky was clear, and the atmosphere transparent. Most of the evenings since leaving Bodœ had been cloudy, and we now watched the north-western sky with mingled feelings of interest and excitement, knowing it would be the last opportunity.

It was about half past eleven, and the passengers were congregated on the deck of the vessel. The sun was not visible. It was behind a mountain that arose from an island in the sea, but the broad skirt of light on every side of the mountain, and over the top of it, indicated that the sun was not far distant, and the increasing brilliancy of the light gave promise of his appearance.

Soon the bright disk appeared in a notch of the mountain, and steadily grew upon the sight until about two-thirds of the surface had come into view, when it passed behind the easterly peak. But this covered but a small space on the horizon. If the sun was going east, as appeared to be the case, (it was now nearly due north), it would soon again emerge. Such proved to be the fact. Soon the luminous disk again made its appearance. It was now about ten minutes before twelve, and the watches were examined from time to time with intense anxiety.

Ten minutes proved to be ample time enough for the object of so much interest to emerge from his covert and to appear in all his glorious majesty. His appearance while passing along the mountain ridge, and



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coming into view, was as curious and wonderful as it was brilliant. The sun appeared like a ball of fiery liquid in constant motion. Not only had it a wavy motion, within itself, apparently indicating it to be liquid, but it appeared to be revolving like the wheels that are exhibited in fire works. Thinking this might be an optical illusion, I inquired of other passengers, and found they saw it in the same way. They remarked concerning both the liquid and the circular motion. After watching it half an hour we retired, fully satisfied with the MIDNIGHT SUN.

On Wednesday, the 24th of June, we arrived at Throndhjem; and thus ended a voyage which, once made, there is no danger of forgetting. The pure and invigorating atmosphere—the sea, quiet as a river, winding its way among a net-work of islands—the splendid mountain scenery and picturesque settlements and villages along the coast—the novelty of constant day for more than a week, and of a fine view of the celebrated North Cape—all combine to make the voyage one of the pleasantest in one's life-time, and to impress it indelibly upon the memory

C. B. WAITE.

BOOK REVIEWS.

A TREATISE ON THE LAW OF LIS PENDENS; or the Effect of Jurisdiction upon Property involved in Suit. By John I. Bennett, L. L. D., Chicago: E. B. Myers & Co., 1887.

This work is one of great value to the profession, being, so far as we are aware, the first treatise upon the subject.

The style is clear, simple and concise, and is characterized throughout by a commendable modesty, the author contenting himself with stating the law as he found it laid down in the cases, of which some 1,500 are cited. These are all carefully arranged in alphabetical order.

In the first chapter, devoted to the origin and history of lis pendens, the author commences by giving the 12th ordinance or rule of Lord Chancellor Bacon, "for the better and more regular administration of justice in the chancery, to be daily observed, saving the prerogative of the court." All of these rules are published in an appendix to this volume.

After defining the rule, and giving its early judicial history, he concludes that lis pendens was remotely derived from the Roman law; that it was in force, with slight modification, as a part of the body of the civil law; that it was transplanted from the civil law into the jurisprudence of the countries of Continental Europe; that the germ of it had been early inoculated into the jurisprudence of England, but that Lord Bacon "by his twelfth rule for the government of courts of chancery, first gave it efficiency and precision, as a part of the body of the common law of England."

In subsequent chapters the author discusses the law of lis pendens, in its various aspects, in a manner that shows much labor and careful research.

The treatise of Mr. Bennett cannot fail to be recognized by the bar as a valuable contribution to the literature of the law.

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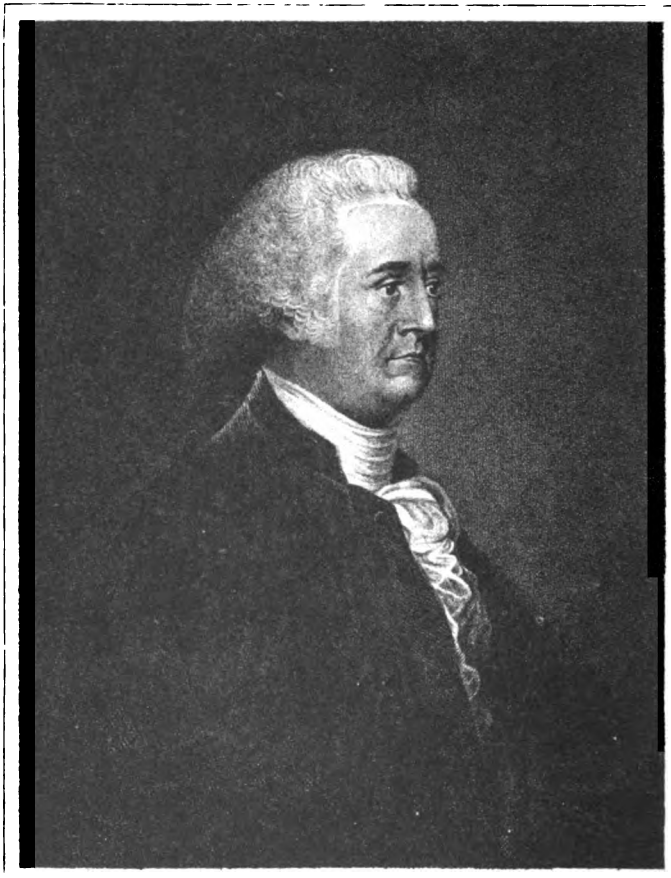

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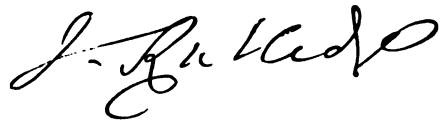
JOHN RUTLEDGE.



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THE CHICAGO LAW TIMES.

VOL. I.] OCTOBER, 1887. [No. 4.

JOHN RUTLEDGE.

John Rutledge, second Chief Justice of the United States, was the eldest child of John and Sarah Rutledge, and was born at Charleston, in September, 1739. His early education was conducted by his father.

At eleven years of age, he was placed under the charge of the Rev. Mr. Andrews, an English clergyman of Christ Church Parish, a man of superior attainments, with whom he remained, pursuing his classical and other studies, for several years. He afterward attended other schools, but in the summer of 1755, when about seventeen, he left school and entered upon the study of the law. His law tutor was James Parsons, a barrister of distinction, and a devoted patriot of the Revolution.

After remaining with Mr. Parsons two years, young Rutledge proceeded to London, and entered as a student in the temple. He was now in his nineteenth year. It was at the close of the reign of George II, and in the time of Pitt, Mansfield, Burke, Gerrick and Johnson. He was not slow to avail himself of the advantages to be derived from coming in contact with such intellects as these.

When, in 1761, he returned home, he received flattering proof of the reputation which had preceded him, even before his arrival at Charleston. While the vessel he was in was eight or ten miles from town, a gentleman who was defendant in a suit for breach of promise, which was coming on for trial,

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went in a pilot boat to meet him, and engage him as counsel. His success in this case gave him at once a prominent standing at the bar, and brought him into an extensive practice. "His eloquence," on this occasion, says Ramsey, in his History of South Carolina, "astonished all who heard him." He obtained a verdict for his client, and a fee of a hundred guineas; a large fee in those days.

In 1763 he was married to Miss Elizabeth Grimke. He was passionately attached to his wife, and her death in 1792, is looked upon as one of the events which concurred in clouding his intellect during the closing period of his life.

The eventful political career of Mr. Rutledge commenced the year after his marriage. He plunged at once into active participation in all the exciting events transpiring in his State, resulting from the passage of the celebrated Stamp Act. In the fall of 1765 he visited New York, as one of the South Carolina delegates to the Stamp Act Convention. Here he came in contact with Otis and other leading spirits of the Revolution.

After the repeal of the Stamp Act, Rutledge devoted himself again to his profession, not engaging in politics, except to serve as a member of the Provincial Legislature. For six or eight years he devoted himself to professional business.

In the summer of 1774 he was elected a delegate to the Continental Congress, and took his seat in that body on the 17th of October.

The proceedings of this Continental Congress are too well known to need repetition here. One of the principal questions in the discussion of which Rutledge took part was whether the denial of the power to tax the colonies by parliament should extend to taxation of every nature, or whether the power of external taxation by levying imposts should be conceded. Those in favor of making this concession, prevailed, excluding, however, every idea of taxation, internal or external, for raising revenue from the colonists without their consent. Another question related to excepting rice from the non-importation acts; an exception which was deemed disadvantageous to the interests of South Carolina.

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Many feared those interests were being sacrificed in favor of the rice planters.

An exciting session of the Provincial Congress was held, and an effort made to pass a resolution against the exception. The resolution was lost by a small majority, and Rutledge and his associates were elected to the next Congress without opposition.

In the Continental Congress of 1775, the labors of Rutledge, like those of his compeers, were arduous and incessant. "The whole Congress is taken up, almost, in different committees," wrote Adams to his wife, "from seven to ten in the morning. From ten to four, or sometimes five, we are in Congress, and from six to ten in committees again." Frequently the same member would be appointed upon different committees, each requiring immediate action. For instance, on the 23d of June, Rutledge was appointed chairman of a committee to draw up a declaration to be published by Washington, upon his arrival at the camp before Boston; and on the same day he was appointed one of a committee to get proper plates engraved, to provide paper, and to agree with printers to print the bills of credit which Congress, on the previous day, had resolved to emit, to an amount not exceeding two millions of Spanish milled dollars. The journals of Congress as well as the brief notes of the debates in that body, preserved by Adams, testify of the constant and laborious services of the distinguished delegate from South Carolina.

The second Provincial Congress of South Carolina assembled at Charleston on the first day of November, 1775. Mr. Rutledge soon after took his seat, and immediately became a leading and most influential member. On the 29th of November, the Provincial Congress adjourned to the 1st of February, after having evinced their continued confidence in the delegates to the Continental Congress, by re-appointing them to again represent the colony in that body.

Upon the re-assembling of the Provincial Congress in February, Rutledge, who had been appointed a member of the Council of Safety, took an active part in providing means for the common defense, and in preparing a new form of govern-

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ment, which was now seen to be an imperative necessity.

On the 8th of February, 1776, he was appointed one of a committee to consider the resolution of the Continental Congress, adopted the previous November, and recommending the mode of establishing a form of government in that colony. The committee made their report, the matter was discussed, and the result was the formation of a State Government.

The chief executive officer was to be called President, and was to have a salary of nine thousand pounds per annum. The choice for this responsible position fell upon Rutledge.

Scarcely had the State Government been put into operation before a British fleet was announced as approaching. All was activity, preparing for defense. The brilliant action at Sullivan's Island, in which, partly by the bravery of the troops, and partly by a combination of circumstances adverse to the British, the enemy was repulsed, and the city for some time saved from occupation, is too well known to be detailed here.

News of the Declaration of Independence was received at Charleston on the 2d of August. It was welcomed with the greatest joy. On the 5th it was officially proclaimed, and celebrated by a grand procession, civil and military, headed by the president and all the officers.

On the 17th of September the General Assembly met at Charleston. This legislature took the initiatory steps, and the next legislature completed the work of changing the State Constitution. State was substituted for colony and governor for president. Rutledge, being opposed to the new constitution, resigned his position. Rawlins Lowndes was elected in his place, and gave his assent to the constitution, which henceforth became the rule of government.

The British ministry, foiled in their efforts against the North, projected the complete conquest of the Southern states. Late in the year 1778, Sir Henry Clinton detached Lieutenant Colonel Campbell, with 3,000 men, for the reduction of Georgia. Gen. Prevost, who commanded the British troops in East Florida, was ordered to effect a junction with Campbell, and assume command. Gen. Howe was disastrously defeated, and the British took possession of Savannah.

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Gen. Prevost, in May, 1779, marched upon Charleston. Consternation prevailed, but every effort was made for defense. Negotiations for surrender were rejected; but while an attack was expected, with the advantages in favor of the enemy, Gen. Prevost, learning that Lincoln was coming with his command to the relief of the city, suddenly changed his mind, and marched away from the place.

In July, the legislature assembled at Charleston. While this body was in session, Count D'Estaing, with the French Squadron, arrived off the coast. A junction was effected between the French forces and the militia, and the allies marched to the relief of Savannah. All were confident of victory, but the allied forces were repulsed with the loss of nearly 900 men, killed and wounded. The French fleet sailed away, Charleston was invested, and on the 12th of May, 1780, fell into the hands of the enemy.

It had been arranged that the Lieutenant Governor and five of the council should remain in Charleston, and that the Governor and three of the council should leave the city.

The State Government continued in operation, and in the trying times that followed, the eminent abilities of Governor Rutledge were fully called into requisition, and were so displayed as to command the lasting gratitude of his countrymen.

The war was continued by Marion, Sumpter and Pickens, and finally by General Greene. The action at Eutaw Springs, in which Greene was successful, resulted in regaining all South Carolina except Charleston.

The term of Rutledge as Governor having expired, he was, on the 31st of January, 1782, again elected member of the Continental Congress. He took his seat May 2d. "He brought into this assembly," says the son and biographer of Hamilton, "all the weight of an established reputation, the influence of inflexible determination, great experience and high eloquence." He was always in earnest; he frequently differed from his compeers, but when he did so, he always gave a reason for his opinion, and advocated it with boldness and determination.

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In 1784, the new Court of Chancery was created, and Rutledge was elected by the legislature, the senior Judge. During his absence from his native State, his affairs had become deranged and his fortune wasted. He now devoted himself to the duties of his new position. Highly as his cotemporaries rated his forensic and legal abilities, and much as they commended the vigor and wisdom that distinguished his executive career, they still regarded his administration of the law as among his first titles to the public respect and confidence. He had much of the advantage of *presence*. He was tall, grave and uncommonly dignified, and delivered his opinions in a manner that at once commanded respect.

Upon the reorganization of the courts of law and equity, in February, 1791, he was elected Chief Justice of the Court of Common Pleas, and thereby his seat in the Court of Chancery became vacated.

Rutledge was one of the South Carolina delegates in the convention which framed the Federal Constitution. He had decided opinions upon every question under discussion. Some of his opinions were, and many of them were not embodied in the Constitution. Upon the subject of the slave trade, and kindred topics, he held substantially the same extreme opinions which were afterward advocated by Calhoun and other South Carolina statesmen.

Returning to his own State, he became a member of the convention called to act upon the Constitution he had aided in forming.

In the first election under the Federal Government, he received the vote of South Carolina for Vice President of the United States.

The Judiciary Bill was approved Sept. 24, 1789. It provided for five associate justices of the Supreme Court of the United States, and Rutledge was one of those appointed to this high position. At the first term of the Supreme Court held at New York, in February, 1790, Rutledge was not present. February 16, 1791, he was elected by the Legislature Chief Justice of the Court of Common Pleas and Sessions. He accepted this position, and resigned his seat on the Federal bench.

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In 1792, he had the misfortune to lose his wife. This gave him a shock from which he never recovered, and conspired with other events to cause the sun of his brilliant career to go down in mental darkness. One of the last flashes of his genius was an eloquent invective against the Jay Treaty.

Upon the resignation of Jay, Rutledge was appointed by Washington, Chief Justice of the United States; his commission dating July 1, 1795. He sailed from Charleston for Baltimore, on the way to Philadelphia, the 31st of July. He was present at the opening of the August term of the Supreme Court. His opinion rendered at that term, in Talbot v. Janson, an important prize case, will be found reported in 3d Dallas, p. 133.

Of his judicial bearing, while presiding at this term of the Court, "enough has come down," says Mr. Wharton, "to enable us to say, that, though tinged with that haughtiness which in later years had marked him, it was graceful and courtly, and that his natural impetuosity had been subdued by the approach of age, the weight of long public service, and by the anxiety of a position which he could not but regard as too insecure." (Wharton's State Trials, p. 36.)

No trace of his disorder was discernible during his stay in Philadelphia. He was perfectly himself; but the excitement of the times was too much, and it soon became evident that he could not properly fulfill the duties of his high position. For this reason, principally, and partly, perhaps, because of his violent opposition to the Jay Treaty, and the speech of bitter invective which he had made upon the subject, he was rejected by the Senate.

The refusal to confirm his appointment extinguished the last spark of sanity, and closed his public career. He languished until the 18th of July, 1800, when he died at the home of his friend, Bishop Smith, of Charleston, at the age of sixty-one.*

*In the compilation of the foregoing article we are indebted to Flanders' Lives and Times of the Chief Justices of the United States.

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AMENDMENTS
TO THE FEDERAL CONSTITUTION.

Article V of the Constitution of the United States provides as follows:

"The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several States, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress."

It will be seen that there are two modes provided for proposing amendments to the States, and two modes of ratification. The history of the government shows, however, that but one mode, either of proposing or of ratifying, has ever been adopted in practice. The uniform practice has been, for the amendments to be proposed by Congress and ratified by the State legislatures.

At the first Congress after the organization of the government, the House proposed seventeen amendments to the Constitution. These were by the Senate reduced to twelve, and they were then submitted to the States.

At various times between November, 1789, and March, 1790, ten of these amendments were ratified by the legislatures of the following States: New Jersey, North Carolina, Maryland, New Hampshire, Delaware, South Carolina, New York and Pennsylvania; one less than three fourths of the twelve States then in the Union. (Annals of 1st Congress, vol. 2,

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Appendix.) In May, 1790, Rhode Island came into the Union, and in June her legislature ratified, but as there were now thirteen States, three fourths had not yet given their assent. Subsequently Vermont was admitted, and in November, 1791, ratified the amendments; but there were now fourteen States, and the requisite number had not yet been obtained. But in December of the same year, Virginia, one of the original twelve, gave in her adhesion, and thus the ten amendments became a part of the Constitution. (Annals 2d Cong. pp. 54, 75.) These were the first ten amendments now in the Constitution, and were declared in force, December 15, 1791.

The eleventh was proposed by Congress, March 5, 1794, and declared in force January 8, 1798; the twelfth, proposed December 12, 1803, and proclaimed September 25, 1804; the thirteenth, proposed February 1, 1865, and proclaimed December 18, 1865; the fourteenth, proposed June 16, 1866, proclaimed July 28, 1868, and the fifteenth, proposed February 26, 1869, and proclaimed March 30, 1870.

In reference to the fourteenth and fifteenth amendments, a very interesting question arose, and was to some extent discussed in Congress; as to how far the action of a State is binding before three fourths have ratified an amendment. So far as the debate proceeded, it developed great diversity of opinion. Some thought a State bound by its ratification so that it cannot retract, whether before or after three fourths have acted favorably. Others considered the States at full liberty to reverse their action whether favorable or unfavorable, at any time before the amendment had been ratified by three fourths of the States; while one at least, Senator Garret Davis of Kentucky, held that no State could reverse its action once taken, whether that action be favorable or unfavorable, and whether three fourths had ratified or not.

The number participating in the discussion was very limited, and the debate partook too much of a political character to develop clearly the principles of law which should determine the question. It was generally conceded, except by Senator Davis, that if the legislature of a State has rejected an amendment, it can afterward ratify it. The principal differ-

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ence was upon the question whether a State, having once ratified, can withdraw its ratification at any time before three fourths have agreed to the amendment.

The great practical importance of the subject will justify some examination of the arguments which have been adduced upon both sides, and some attempt to arrive at a correct solution of the question.

In the 2d session of the 40th Congress, Senator Sherman had introduced a resolution declaring the 14th amendment ratified by three fourths of the States. Afterward, on the 31st of January, 1868, he communicated the resolutions of the Legislature of Ohio, withdrawing, or attempting to withdraw, its ratification. He made a somewhat extended speech upon the occasion, deprecating the action of the Legislature and denouncing it as political and partisan, but expressed no opinion against the power of the Legislature to take such action. On the contrary, he admitted that the power might exist, and that the resolutions might not, perhaps, be a usurpation of authority.

He was followed by Senator Sumner, who distinctly denied the existence of any such power. "By the Constitution of the United States," said he, "a State may give its assent to a Constitutional amendment. There is no provision for any withdrawal of such assent when once given. The assent of the State, once given, is final. A State, I do not hesitate to say, can no more withdraw such assent than it can withdraw from the Union." (Cong. Globe. 2d Sess., 40th Cong. pp. 876, 877.)

At the same time he contended that three fourths of the States entitled to be counted had ratified the amendment, and that it was in full vigor, even without the assent of Ohio. (Ibid).

Reverdy Johnson said, if the honorable member from Massachusetts was right in saying that the amendment had been adopted by the requisite number of States, it would of course result that no one State which had assented to it could withdraw But he gave it as his impression that such assent could be withdrawn at any time before three fourths had

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given their assent. "If not," said he, "such action would remain forever binding upon the States assenting, even if the proposition should then fail, and be renewed afterward." He looked upon what the States did preliminary to a decision of the requisite number, as a mere promise or undertaking that each would assent when the others should be ready to assent. (Ibid. p. 878.)

In the House, the resolutions of the Ohio Legislature were on the same day referred to the Committee on the Judiciary, with instructions to report on the legal questions involved. (Cong. Globe, 2d Sess. 40th Cong. p. 891.) It does not appear, however, that any report was ever made.

In the case of New Jersey, whose Legislature had taken similar action, the point was not made, because the resolutions were returned by the House for the reason that they were disrespectful to the House, and scandalous in character. (Cong. Globe, 2d Sess. 40th Cong. p. 2226.)

The same question afterward arose in reference to the 15th amendment, when the Legislature of New York withdrew its ratification. In this case, Senator Conkling, though claiming that the amendment had already become a part of the Constitution, irrespective of the action of his State, made an elaborate and eloquent argument against the right of a State to withdraw its ratification.

The following is an abstract of the points made by Senator Conkling:

The ratification of a constitutional amendment is not a power inherent in the States, but a specific function; a special power. While it is conceded that ordinarily, in negotiations between competent parties, either has the liberty to withdraw until it is lost by advancing so far as to give the other party the right to treat the matter as concluded, yet this is a different case; it being the exercise of a limited power—a special function. It is a chartered permission; an elective opportunity. It is not the exercise of an ordinary act of legislation; citing Hollingsworth v. Virginia, 3 Dallas, 378.

Permission to alter the Constitution at all is in derogation of the Constitution and of the common right which the Constitution embodies. While organic law is in a general sense a compact, in our system, organic changes do not preserve the features of contracts. There are reciprocal obligations, but there are other commanding elements. The Constitution was formed, not by the States, but by the American people. The amend-

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ments are submitted to the States for convenience of mode in ascertaining the will of the people of all the States, and so of all the nation. Suppose the mode of ratifying had been by conventions instead of by the legislatures. Such a supposition illustrated the absurdity of the opposite theory. If such power be conceded, a legislature might act which had not been elected for such a purpose. Such a function is exhausted with a single exercise. Instances given by way of illustration. Appointment of Senators by legislatures of States—election of President of the United States by the House of Representatives or by electoral colleges—the pardoning power—the veto power. What is to be done? It is not to concur, or assent, or approve, but to ratify. Was it ever suggested that a ratification of the Constitution itself could be revoked? Though a State, once ratifying, could not change its action, the reverse could be done. A State, after refusing to ratify, could still ratify, since a refusal was nothing but a neglect to ratify; as a party could neglect to make a treaty and afterward make it, or a person could neglect or refuse to marry and could afterward marry. But in either of these cases, the party, having once done the act, could not undo it. If the power to retract exists, then Congress could change its action, and withdraw the amendments from the consideration of the States before they had had an opportunity of acting upon them.

These were the points made by the Senator, and they were enforced with great clearness of diction and copiousness of illustration. (Cong. Globe, 2d Sess. 41st Cong. p. 1477.)

The admission of Senator Sherman, that the power does or may exist, is significant, made, as it was, counter to the promptings of party bias; and notwithstanding the positive propositions of Senator Sumner and the plausible arguments and fervid oratory of Senator Conkling, the difficulty suggested by Reverdy Johnson still remains.

If the assent of a State, once given, cannot be withdrawn, even if three fourths refuse to ratify, the action of the State would remain forever binding, and the proposal, which at the time had failed, might be renewed, forty, fifty, or even a hundred years afterward, when the condition of the country or of society had, in the meantime, greatly changed, and those States which had ratified might be very desirous to change their action. That a state should thus be bound to the corpse of a dead proposition, which might be reanimated and brought forward long afterward, by other States differently situated, is in the highest degree unjust.

It will be noticed that there is no limitation to the time

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within which a State must act. If the theory contended for be the true one, then those States which ratified the other two of the amendments proposed in 1789, are still bound, and the Senate of Ohio actually proceeded upon that assumption in 1873, passing a resolution ratifying one of those rejected amendments.

Suppose that while an amendment involving some radical change, is pending before the States, some one or more of them should, by constitutional or legislative action, adopt the very measure under consideration, and that experience should show it to be unwise and detrimental; still no State which had ratified could avail itself of this experience. It must remain bound, and run the risk of enough more ratifying to make the obnoxious measure a part of the Constitution.

The ratification or rejection of an amendment is treated by Senator Conkling as the exercise of a special power granted by the Constitution. Is this a correct view of the matter? The provision in regard to amendments was made by the same parties who framed the balance of the Constitution. They had just as much power to amend the instrument as they had to make it, and without the provision for amendment the Constitution never would have been adopted. Having already the power to amend, or, which is substantially the same thing, the power to provide for making amendments, the delegates merely prescribed, in the fifth article of the Constitution, in what manner the amendments should be made. Instead of looking upon the fifth article as a special grant of power, it should be regarded as a provision regulating the mode in which the States could modify or change, or make additions to the compact they were forming.

That a constitution is ordinarily to be regarded as a compact between the parties adopting it, is admitted by Senator Conkling. He says: "In a general sense, no doubt, organic law is a compact." But he claims that our system is exceptional in this respect. If it is exceptional it is because with us, the features of a compact appear with unusual clearness.

Again, he says, the Constitution was formed, not by the States, but by the American people. It was formed both by

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the States and by the people; and to say it was formed by the people and not by the States, is as erroneous as to say it was formed by the States and not by the people. It was formed by the people representing their respective States, and was ratified by the people representing at the same time the States separately and all of them together, constituting the new government which was being formed. How can it be said it was not formed by the States, when every vote in the Federal Convention was given by States, each State having one vote? It is feared by some, that if we admit the Constitution to be a compact, we must concede to any one of the parties the right to withdraw, or in other words, the right of secession. That by no means follows. One feature of the compact was the formation of a permanent government for all the States united, with all the powers necessary for its own preservation. The government was formed, not for themselves merely, but for their posterity for all time to come; and in giving to it, in the Constitution, all the power necessary for its preservation and maintenance, and in providing that the Constitution and the laws of the United States made in pursuance of it, should be the supreme law of the land, anything in the Constitution or laws of any State to the contrary notwithstanding, each State forever surrendered the right, by withdrawal, to destroy the government it had thus assisted in forming.

Three fourths of the States must agree, in order to make the amendment a part of the Constitution. That being the case, should not the people of each State be free to say whether or not they will agree to this new compact, until it has been agreed to by the requisite number? Should they not have the right to change their vote at any time before the vote has been announced? If they can change from no to aye, why can they not change from aye to no? On the theory of a special power they cannot change either way; for, a special power, once exercised, is gone forever. Hence, Senator Garret Davis was perfectly logical when, from the stand-point of a special power, he held that no change could be made either way, and showed that Senator Conkling was not accepting a conclusion which resulted from his own premises.

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The special power, if there be one, is in its terms, to ratify. It is conceded that the power to ratify implies the power to reject, but it is claimed that when the express power to ratify has once been exercised, the power is exhausted; while at the same time, it is conceded that the implied power of rejection, which is only the counterpart of the express power, may be re-exercised. In other words, the express power is exhausted by its exercise, while the implied power is not exhausted by its exercise, although the same act may result in the exercise of either power.

If, rejecting the theory of the exercise of a special power, the matter be regarded as a deliberative proceeding had with the view of determining whether certain parties can agree upon a certain contract, the subject is at once divested of all difficulty. If 38 persons should meet together for the purpose of determining whether a certain measure could be agreed to, and if it had been previously agreed among them that in this particular matter the affirmative action of 29 should bind the whole, the proceeding would not be attended with any trouble. The whole matter would remain open, and subject to discussion and to change of votes, until 29 should have voted for the proposition.

Senator Conkling supposed the case of a State Convention called for the purpose of acting upon the amendment, and asks whether in case such a convention should ratify, another convention could be called to reverse its action. He thinks the mere statement of the proposition sufficient for its own refutation. But the return question could be put, if the convention rejects the amendment, can another convention be called to ratify it? If not, what becomes of the continuing power of ratification? The argument against calling a new convention, based on inconvenience, is as strong in the one case as in the other. The inconvenience of calling successive conventions is probably the very reason why the matter has uniformly been referred to the State legislatures, which, as continuing bodies, could better exercise deliberate, and if necessary, revisory action.

Senator Conkling says, permission to alter the Constitution

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at all is in derogation of the Constitution and of the common right which the Constitution embodies. It is difficult to discern the correctness of either of these propositions. How can any article of the Constitution be in derogation of that instrument? Article V, providing for amendments, is a constituent part of the Constitution, framed and adopted at the same time with the rest. How, then, can it be in derogation of the whole instrument? And how is it in derogation of the common right embodied in the Constitution? It was rather for the preservation and enhancement of the common right that the provision for amendment was inserted in the Constitution.

If such a power be conceded, he says, a legislature might reverse a previous ratification, when the legislative body taking such reverse action, had not been elected for any such purpose. But precisely the same may be said of a ratification. It is liable to be made at any time by a legislature not elected for any such purpose; especially since, as is conceded, the amendment is continually pending until ratified.

The cases cited as illustrations of the exercise of a special power, which is exhausted with a single exercise, are not in point, since the act is entire and the performance complete in those cases, and so far as there is an element of contract in them, the contract is closed when the act is performed. Here the contract is not complete until three fourths of the States have ratified.

The case cited from 3d Dallas, (Hollingsworth v. Virginia,) decides only, that proposing an amendment by Congress, is not such an act of ordinary legislation, as to make it necessary to submit the proposed amendment to the President for his sanction.

The Senator says, the act to be done is not to concur, or assent, or approve, but to ratify. This is a distinction without a difference. If the amendment were to become valid as a part of the Constitution, when it should be concurred in, or assented to, or approved, by three fourths of the States, the effect would be precisely the same; and the history of the Federal Convention and of the various State conventions which adopted the Constitution, will show that these terms

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were used indifferently and with substantially the same signification.

He contends that if the power to retract exists, then Congress could change its action and withdraw the amendments from the consideration of the States before they should have had an opportunity to act upon them. It is not easy to see what bearing this has upon the question. If such should be the logical result of the doctrine, which is by no means admitted, there would be nothing sufficiently serious in the consequences to constitute a valid argument against it.

Senator Conkling asks, was it ever suggested that a ratification of the Constitution itself could be revoked? The answer is, yes; both in the Federal Convention and in at least one of the State conventions.

In the Federal Convention, Col. Mason, speaking of the proposal to refer the Constitution to the States for ratification, advocated the plan of State conventions, giving as a reason, that if it should be referred to the State legislatures, "succeeding legislatures, having equal authority, could undo the acts of their predecessors." (Madison Papers, p. 352.)

This position was controverted by Mr. Ellsworth, who said: "An act to which the States, by their legislatures, make themselves parties, becomes a compact from which no one of the parties can recede of itself." [Ibid, p. 364.] The inference is, that he was referring to taking reverse action after the requisite number had ratified, since not until then could there be any compact.

The remarks of Col. Mason might imply that he did not think the power to recede would remain after a State had ratified by convention. But in the Virginia Convention the prevailing opinion was manifestly the other way. When that Convention was in session, eight States, one less than the requisite number, had ratified the Constitution; and all by conventions. Mr. Pendleton said, while discussing the propriety of proposing amendments by that Convention:

"With respect to the eight States who have already acceded to it (the Constitution), do gentlemen believe that, should we propose amendments as the sine qua non of our adoption, they would listen to our proposals? I conceive, sir, that they would not retract." (El. Deb. vol. 3, p. 303.)

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Gov. Randolph said:

"As I think that those eight States which have adopted the Constitution will not recede, I am a friend to the Union." (Ibid. p. 29.)

Mr. Madison said:

"Suppose eight States only should ratify, and Virginia should propose certain alterations, as the previous condition of her accession. If they should be disposed to accede to her proposition, which is the most favorable conclusion, the difficulty attending it will be immense. Every State which has decided it, must take up the subject again. They must not only have the mortification of acknowledging that they had done wrong, but the difficulty of having a reconsideration of it among the people, and appointing new conventions to deliberate upon it." (Elliot's Debates, vol. 3, p. 618.)

Again, at a later stage in the discussion:

"If we call on the States to rescind what they have done, and confess that they have done wrong, and to consider the subject again, it will produce such unnecessary delays, and is pregnant with such infinite dangers, that I cannot contemplate it without horror." (Ibid. p. 630.)

Thus it appears that in the Virginia Convention, the right of a State to withdraw its ratification, under any form in which it had been given, before three fourths had ratified, was distinctly recognized by some of the ablest statesmen of that day, and in the Federal Convention the right was recognized under one form of ratification, while no opinion against the power was clearly expressed in either Convention.

Whether, therefore, we look at the reason of the thing, or at the opinions which prevailed at the time of framing and adopting the Constitution, the better conclusion would seem to be, that any State may withdraw its ratification at any time before, by the agreement of three fourths, the amendment has become a part of the Constitution. Of course it would follow that the withdrawal itself could be reversed, and the amendment again ratified. Each State would possess full liberty of action, until the amendment had been ratified by three fourths of the States, excluding from the computation any which had finally withdrawn their ratification.

In the language of Patrick Henry, in the Virginia Convention, "three fourths of the States must ultimately agree to any amendments that may be necessary."

Charles B. Waite.

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LAND GRANTS IN NEW MEXICO.

When Carleton's volunteers had finally conquered the Navajo Indians and hived them on far off reservations, when the followers of Carson and St. Vrain had made the Santa Fe trail safe from the Raton Pass to the Valley of the Rio Grande, it was believed that Northern New Mexico would soon be filled with prospering settlers; that the placers and veins first discovered by the Spaniard would now, when touched by the magic wand of American enterprise, yield up treasures which should astonish the world.

Sanguine pioneers declared "the clock had struck six in the morning of New Mexico's destiny;" that the sun of a new day was shining on the towers of Pecos, and the ruins of La Gran Quivira.

Long trains of emigrants pressed through the mountain passes from the north, and the new comers were refreshed and inspired by the beautiful plains of Las Vegas. A thousand preemption cabins arose along the pleasant waters of the Cimaron, and Americans dreamed of immediate statehood for New Mexico.

But the sun was soon obscured by a cloud, and the promised development and progress of the territory were arrested by an enemy more terrible than savage tribes—an enemy not to be conquered by armies—an enemy which has for more than twenty years turned back the tide of immigration, and defied the power of Congress, the federal courts, the army, and

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every President of the United States, except the present chief magistrate, who is making war against this monster with characteristic energy and courage.

A glance at the map of New Mexico shows the disease from which this rich territory is suffering. It is spotted all over with Spanish and Mexican land grants more or less fraudulent, and varying in size from a thousand acres to four hundred square leagues.

New Mexico was ceded to the United States by the Republic of Mexico, in 1848, under the treaty of Guadalupe Hidalgo. By the 8th section of that treaty all property in land under Spanish or Mexican law, was to be "inviolably respected" by the United States.

By the famous Queretaro protocol to that treaty (which was duly ratified, as well as the treaty itself) it was provided that "all legitimate titles to lands in New Mexico," which were *legitimate titles under Mexican law* up to May 13, 1846," should be upheld and respected, and it was further declared that "such titles shall preserve the *legal value which they may possess*, and the grantees may cause their *legitimate* titles to be acknowledged before the American tribunals."

Thus the high contracting powers declared in this treaty that only *legitimate titles*, or titles proved to be good and valid under Spanish and Mexican law should be upheld or confirmed by the United States.

It was also agreed in Article XI of the treaty, that "for the purpose of giving to these stipulations the fullest possible efficacy, thereby affording the security and redress demanded by their true spirit and intent, the government of the United States will now and hereafter pass *without unnecessary delay*, and always vigilantly enforce, such laws as the nature of the subject may require."

When the treaty and protocol were duly ratified, all their provisions became, under Art. VI, of the Constitution of the United States, a part of "the supreme law of the land," to be respected as such in all courts. The United States observed its solemn compact "to pass without unnecessary delay, and vigilantly enforce, such laws as the nature of

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the subject [matter of the treaty] required, by doing nothing for over six years, and then by passing the absurd and wicked law known as the act of July 22, 1854, which defines the duties and powers of the Surveyor-General of New Mexico.

By the 8th section of that act, it was made the duty of the Surveyor-General of the territory, "to ascertain the origin, nature, character, and extent of all land grants therein under the laws, usages, and customs of Spain and Mexico." He was authorized to summon witnesses, administer oaths, and take evidence in each case, and make a report to be laid before congress for confirmation or rejection.

No limitation of time was inserted in the act for the repose of titles, and no penalty was provided for the failure to present or file claims in this anomalous land court. The most important details of administration and practice were left to the discretion or fancy of the Surveyor-General.

Until final action by congress on the reports of this officer in each case, all lands covered by the claims filed, or to be filed, were expressly reserved by the act from survey, sale and settlement under the general land laws.

An exiled political appointee, skilled, perhaps, in the use of a surveyor's compass, was thus suddenly erected into court, judge, and jury, to pass upon the validity of complex land titles acquired under the laws of Spain, as applied to her ultramarine provinces; one who should properly construe and apply the "*Ordenanzas de Tierras*," of Spanish Kingdom and Mexican Republic, and by his decree declare whether all the solemnities attendant on the act of "juridical possession" had been duly complied with.

Sancho Panza, when he came into the government of the Island of Barataria, was never thrown into such hopeless perplexity as were these Surveyor-general judges by the work imposed on them.

Unable to distinguish a decree of Spain's viceroy from the order of a presidio captain, they lent themselves, often unwittingly, to the most barefaced, but successful, conspiracies for stealing the public lands which can be found in our history, replete as that history is with robberies of the peoples' heri-

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tage. Successive Surveyors-General of New Mexico for over thirty years (with the exception of the present incumbent) have rested in the arms of the octopod, known as the Santa Fe Land Ring; a ring which has during that time controlled judges, governors, senators, delegates, and congressmen; which has prevented the repeal of the infamous law of 1854, and the appointment of a land claims commission for the territory, and which has caused to be pigeon-holed and postponed indefinitely such admirable measures of reform and relief as those proposed and advocated by Messrs. Edmunds and Thurman in the Senate, and Mr. Hazleton in the House. The natural result has followed. After over thirty years operation of the law it is estimated there are more than 1,000 alleged land grants now pending for adjudication. Only about 140, including Indian pueblos have been reported to congress, and of the number so reported only about 70 have been confirmed.

Of those confirmed and patented, subsequent developments have shown such wholesale forgery, perjury, and false surveys, upon which congress was blindly led to act, that this body now declines any further action whatever in pending cases. The owners of genuine grants are thus made to suffer with the guilty. One of the tricks was for the Surveyor-General to send no original documents for the inspection of the congressional committee, but only copies made at Santa Fe.

It was thus impossible to see whether a title paper had been antedated, changed, or wholly forged. Grants originally intended to contain only 11 square leagues or about 48,000 acres, were expanded so as to embrace 400 square leagues, or 1,800,000 acres

A forged title paper filed in the Surveyor-General's office and alleged to be a Spanish or Mexican grant, operates by the express provisions of the law to withdraw from settlement under the homestead, preemption, and desert land laws, the entire area of land claimed in the paper, be it one thousand or one million acres.

Cattle and land syndicates acting in unison with the Santa Fe ring have thus effectually barred out the settler, homesteader, and miner from the rich domain which was honored

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by its first conquerors with the name of "New Spain."

No man or company can develop or work a mine there with safety, because if it proves valuable, an ancient title paper covering the mining location is at once resurrected, possibly from the archives of a remote monastery, or the strong box of a defunct and forgotten alcalde, but most probably from the closet of a land title forger in Santa Fe. This paper, filed in the Surveyor-General's office, stops work on the mine, and ties the property up indefinitely until settlement with the blackmailers is made. And all this in spite of the fact that neither Spain nor Mexico ever granted absolute title to mines or minerals, but only a temporary usufruct. Grants of lands for agriculture or grazing never conveyed any rights whatever to mines or minerals under Spanish or Mexican law.

Legal consistency is, however, of no great consequence to the land ring; they have done well in the past without it, and hope to do even better in the future.

One of the curious features of the confirmation and issuing of a patent by the United States to the lands covered by these fraudulent grants, is this: The United States patent operates by express statute merely as a relinquishment or quitclaim of all right, title and interest on the part of the United States, and without prejudice to the rights of adverse grantees or claimants. It is probable that such patent vests, *prima facie*, in the grantee all title of the United States in minerals covered by the grant, because the United States succeeded to the sovereign rights of Spain and Mexico in such mineral lands, and by its quitclaim conveys "all its right, title and interest," which would necessarily include minerals; and yet the original grant could not, under Spanish and Mexican law, convey any thing except rights of agriculture and grazing.

It is believed that these patents are voidable on the ground of fraud, and because confirmed and patented in defiance of the plainest rules of Mexican law, also in violation of the Treaty of Guadalupe, which is "the supreme law of the land," and superior to acts of Congress conflicting therewith. Actions should be brought by the Attorney-General of the United States to set aside these patents, on the ground of fraud, and

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because the United States did not intend to do more by its patent than confirm (in the language of the treaty) "legitimate titles existing under Mexican law."

For instance, under the colonization laws of Mexico passed in 1824, the maximum quantity of land that could be granted to an individual was eleven square leagues. This limitation was in various cases openly and plainly violated by the Mexican authorities themselves.

The metes and bounds, in some original grants, were run from one mountain peak, or other natural object, to another, regardless of the amount of land included, which might, and did in many cases, embrace double or quadruple the maximum quantity allowed by Mexican law.

In this connection the definition of what is to be deemed a valid title under the Treaty of Guadalupe becomes most significant. "Legitimate titles, [which alone shall be respected by the United States], are those which were legitimate titles under the Mexican law."

There are also many grants which were made on condition that the land should be actually occupied for agriculture and grazing, and the abandonment or non-user of the land caused it, under existing laws, at once to revert to the Mexican government, to be afterward regranted to a more industrious applicant. This accounts for the manner in which one grant often "laps" or covers another in New Mexico.

In some instances these first old title papers to lands which had long years before reverted back to the Mexican government, and had been granted a second time, and again abandoned, have been resurrected, and the first defunct title confirmed by Congress, and a patent issued. Such titles are doubly fraudulent and void, and should be so adjudicated.

It is notorious that in the famous Maxwell grant, now patented and confirmed for about 400 square leagues or 1,714,764 acres, several of the principal documents evidencing the original title show that the grant was intended for two persons only, and 22 square leagues at the most.

A ludicrous instance of the manner in which legal principles have been distorted and misapplied to uphold a grant title,

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fell under the writer's observation in the case of the Anton Chico grant. It had been confirmed and patented by the United States for 378,537 acres of land. It was originally granted by Governor Melgares of Mexico, in 1822 "to one Manuel Rivera, and his 36 companions, and for the use of all other citizens who in the future might remove and settle there." It was purely and simply an "*Empresario*" or community grant for the benefit of a whole Mexican colony. The United States patent (issued in 1883) ran to "Manual Rivera and his 36 companions, their children, heirs, successors and assigns, as in said original grant provided, and subject to all the provisions and conditions mentioned and set forth in the decree granting said tract of land."

The confirmation and patent operated simply to affirm in the whole colony of Anton Chico (a village on the Pecos River) the rights existing under the original grant. The confirmation and patent were secured by the untiring efforts of the village school-master, who went on to Washington, and it was thought to firmly secure the rights of the people of Anton Chico, who had their little farms or allotments in severalty along the Pecos, and used the vast grazing area of the grant in common, according to Mexican law and usage. But the Sante Fe ring wanted the land, and they proceeded to acquire title as follows:

Although the name "Manuel Rivera" is as common in that country as John Smith here, some poor shepherds were found whose grandfather was one "Manuel Rivera." Quit-claim deeds were procured from these heirs of Rivera, and a principle of English law was invoked to overthrow a valid Mexican land title. The opinion of a famous lawyer was obtained, who passed on the Anton Chico patent according to the best authorities extant in the English and American law of real property. He declared the patent was good in "Manuel Rivera, his heirs and assigns," but void for uncertainty as to the other unnamed grantees! The happy grantees of the Rivera shepherds then proceeded to sell out their 378,537 acres of land to a big cattle company. But unfortunately, one of the provisions of the original Anton Chico grant compelled

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the citizens of that commune "to be at all times equipped with fire arms, bows and arrows, and hold frequent musters to repel Indian or other invasions." They have observed this law to the letter, and the cattle company has not yet set a hoof on the mesas and plains of Anton Chico. The company would now like to find a purchaser of their 'rights' in this fine property.

It is beyond the scope of this article to define the varied and peculiar tenures of these lands under Mexican law. Some tracts were granted to individuals for distinguished military services, and others were granted to the inhabitants collectively of pueblos, or towns, to aid and promote their growth. Other grants were made to religious orders to uphold and maintain the Catholic faith.

Many grants were made to promote agriculture and grazing, and encourage colonies settling in the new country. Neither Spain nor Mexico ever granted absolute title to mines and minerals. Whatever rights were granted were temporary, and in the nature of an usufruct, the actual dominion or title remaining in the sovereign Separate ordinances were made concerning mining rights, which were never included in the large grants made for agricultural and grazing purposes.

The Spanish and Mexican policy encouraged actual settlers, and jealously prevented the acquirement of lands for other than actual use and occupation. Abandonment or non-user worked an immediate forfeiture of rights, however firmly vested, and authorized the government to grant the forfeited lands to others. Successive forfeitures and grants of the same lands were therefore of frequent occurrence.

In the case of a community, or town grant, the grazing area was in common, but parcels or lots in the village were set apart to particular individuals or families by the alcalde or other local magistrate; similar allotments in severalty were made of irrigable or agricultural lands along streams, which were practically in fee, and respected as such forever. These allotments were usually made at the time "juridical possession" was given under the grant—a ceremony corresponding in some respects to the English "livery of seizin."

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One bright spot in the history of these grants is the righteous confirmations and patents made in favor of the Pueblo Indians of New Mexico. These peaceful and industrious communities such as Laguna, Tesuque, San Juan, Zuni, Taos and Acoma, enjoy their lands in fee simple absolute, without possibility of ejectment by rapacious whites.

These Indian grants are, many of them, from the sovereign of Spain, generally bearing date about two hundred years ago. They usually contain about 17,000 acres in a square form, the pueblo or community dwelling being in the centre, and the patent from the United States runs to the pueblo itself, *eo nomine*, rendering alienation impossible, as the title is in the entire community for the common use of all. These Indians have orchards and corn fields, and abundant area for grazing their sheep and cattle. They are peaceful, contented and free. At the outbreak of the rebellion, the pueblo of Taos alone sent $100,000 in gold to President Lincoln as evidence of their loyalty; and these Indians of Taos now receive interest on the loan, which is evidenced by bonds held in trust for their benefit. It is gratifying to know that their simple faith has been rewarded by the indisputable confirmation of their land title in perpetuity.

In one instance, that of the Pueblo of Pecos, which was a grant from the King of Spain, (A. D. 1689), nothing now remains but the stone ruins of the pueblo houses and the old Pecos church with its fallen towers and crumbling walls.

Repeated incursions and attacks from warlike Comanches, reduced the Pecos Indians to a feeble band. The United States confirmed their grant, nevertheless, and a patent, bearing the President's signature assures to "The Pueblo of Pecos" 18,763 acres of land with a magnificent river running through the tract. But the remnant of these people, in whose midst Montezuma is said to have been born, in the fear of total extinction, carried their sacred fire from its underground altar up into the sunlight, and fled to the larger Pueblo of Jemez; and now their identity, like that of the mysterious flame which they had for ages so well kept, is forever lost in that of

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the larger commune. But the question is, who now owns the 18,763 acres of land patented to the extinct "Pueblo of Pecos?"

With the public domain nearly gone, it has become a burning question as to what Congress is going to do in New Mexico. Settlers on the Cimaron and the Canadian are now in open rebellion against the curse of fraudulent land grants, and are demanding a general expose of the steals, and such legislation as will segregate rightfully confirmed tracts from the public lands, and provide a date after which all land grant claims shall be forever barred.

President Cleveland has struck several sturdy blows at the Santa Fe land ring, smiting thieves who wear the Democratic as well as the Republican party label. He has appointed an honest man, Hon. George W. Julian, as Surveyor-General, who has in a few short months unearthed a hundred stupendous land steals. Mr. Julian cannot be bribed or diverted from his duty, and if the power of the ring cannot tie his hands, it is more than likely he will fall at his post, a victim to its wrath and revenge.

William S. Brackett.

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MEMORIAL DAY.

THE CHICAGO BAR ASSOCIATION.—The first semi-annual memorial meeting of this association, under the new arrangement, was held in Farwell Hall, June 25th, Mr. Huntington W. Jackson presiding. Mr. C. C. Bonney, chairman of the memorial committee, in a few well timed remarks announced the objects and purposes of the association in holding these semi-annual memorial meetings. Below we give entire the eloquent address of Robert Hervey upon the life and services of the lamented Judge John G. Rogers, and extracts from the response of Chancellor Tuley, of the Circuit Court.

MR. ROBERT HERVEY,

in a voice that showed much feeling said:

May it please your Honors:

At a meeting of the Chicago Bar, held some time ago to take appropriate action with regard to the awfully sudden and melancholy death of our dear and respected friend, Judge John G. Rogers, of the Circuit Court of this county, I had the honor of being appointed by the chairman of that meeting to present to the Appellate Court of the First District of this State, the memorial and resolutions adopted by the bar on that occasion.

Since that time the present arrangement for stated "Memorial Days" has been adopted by the Bar Association, and therefore what little I have to say is said on this first "Memorial Day," and in this presence.

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Although I but rarely trespass on the indulgence of courts in the discharge of a duty frequently assigned to me, being generally content simply to present the resolutions and make the appropriate motion, yet, having for many years been on the most intimate terms, personally and professionally, with our lamented friend, and having always experienced the greatest kindness at his hands, I feel that I can not allow this last sad opportunity to pass without saying a few words in honor of his memory, and expressing my sincere and heartfelt personal sorrow at the great loss, which not only the bench and bar of Chicago, but the entire community have, in the death of Judge Rogers, been thus unexpectedly called upon to deplore.

Your Honors: This memorial, touchingly beautiful as it is, and the accompanying resolutions, are no empty sounds, nor the embodiment of mere words of course. They are the simple, honest, earnest truth, no more, no less, as every one who knew the deceased, well knows.

For nearly seventeen years Judge Rogers occupied a seat on the bench of the Circuit Court, to which he had been elevated by the well deserved favor of the people.

Throughout that long and not uneventful period, "his public life was distinguished by that dignified and sustained exercise of high judicial conduct which won for the administration of the law in his court, the respect and confidence of the people; but more especially to the members of the bar did his long and eminent judicial career exhibit a bright example of the display of all those attributes which best become a judge in the discharge of his varied and important duties.

"To a clear and powerful intellect, to legal learning at once acute and profound, to a patient and unwearied assiduity and attention, he added the estimable and scarcely less important qualities of unvarying courtesy of demeanor, evenness of temper and kindness of heart."

So much for the Judge. Now for the man.

The character of Judge Rogers was remarkable for its sincerity, its manliness, its honor, its independence. He was too brave for disguises and too truthful for affectation. He ad-

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mired and personally practiced all that is just and honorable in principle and conduct, all that is graceful and exalted in the actions of men. He was the most true and faithful of friends, a worthy citizen, a fond and affectionate husband and father, and under all circumstances he was entirely, essentially, unmistakably, a gentleman.

The change wrought by the touch of death is fearful to contemplate. The many, many friends who, in years past have departed from amongst us, and whose deaths have from time to time been made the subject of this kind of affectionate remembrance, stand now no further from us than he whom we have so lately lost. The narrow line over which we may be suddenly summoned is all that now separates us. Silent shadows on the one side—toiling, struggling, perhaps suffering, living men upon the other.

Not very long ago Judge Rogers was in his place upon the bench, in the apparent enjoyment of his customary health, engaged in the performance of his important duties, exchanging with his brethren of the bar those kindly courtesies in which none excelled more than he. Within a half an hour of his death I sat on the bench with him in conversation, and parted from him with a kind shake of the hand and a cordial good-bye. Little did he then imagine, and little did those in his court room on that day think that even then the bow of the destroyer was bent, that even then *he* was treading on the dark thresholds of *two worlds*, and that within a few brief minutes those flashing eyes would be dimmed forever; that well known pleasant voice would be hushed, to be heard no more, and that all that earth would contain of that well remembered form would be but cold and silent dust. But we never know, and perhaps it is better that we do not, we never know when the hour of destiny strikes on the dial of our lives, and in this last and most terrible instance of mortality which has almost paralyzed our hearts, we have but another proof of by how frail and uncertain a tenure we hold our mortal life, and as I look on this assemblage of my friends now around me, and feel that no created being can tell who of us, speaker or listener, shall next be stricken down, on whose

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coffin lid the dull and heavy sound of the falling earth, and the appalling words 'Ashes to Ashes," "Dust to Dust" shall next strike on the ears and hearts of the survivors like a knell, am I not warranted in saying that this is indeed a speaking warning, and that from the left dwelling place of the soul of our departed friend, there issues yet a living voice crying out in trumpet tones to us who remain behind, "Prepare and be ye ready," "for ye know not when your time cometh."

Judge Rogers is dead! I scarcely realize the fact. Every line of that genial countenance haunts me as I speak; but alas, alas, it is too true. That brave and kindly heart is pulseless now. That well remembered form is now but a clod of the valley. The laurels that he won by a long life of honored citizenship and of public trusts and duties faithfully discharged, and which he wore so gracefully and so well, are faded and gone. His court is closed forever, and from the unknown world on which he has entered no messenger comes back to tell what place he takes amidst the vast throng there waiting for the grand assize.

We who remain, honor his memory, because "the standard of his life was the faithful discharge of every duty." We have paid the last sad tribute on earth to his many virtues. We have stood around his grave, lowered him down gently, strewed the flowers over him, covered him up, smoothed the last sod, dashed away the tear, and now we lay the chaplet on the tomb.

Worthy and excellent friend and brother, Farewell! Deep and dreamless be to thee the sleep of the grave, till summoned to receive that reward which we are well assured shall at last be bestowed on the faithful and honest heart.

JUDGE TULEY

responded in substance as follows:

Mr. President, Ladies and Gentlemen:

I cannot speak to you in the eloquent language of the gifted advocate who has just addressed you. What I have to say must be spoken in plain, common and friendly words, not unlike those I have heard our lamented brother use upon similar occasions.

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It was my rare fortune, from the period of Judge Rogers' arrival in Chicago, about the year 1857, up to the date of his death, to have known him in many and varied relations of life.

In our younger days, before the frosts of time had tinged the hair of either of us with white, we were neighbors, and I knew him much better, socially, than in later years. I knew him also as a true and tried friend, a brother attorney practicing at the same bar, as a judge upon the bench, and finally as a colleague upon the same bench.

From the first day that I met him he had my admiration and respect. His private life was singularly pure and beautiful. He was remarkable for his great amiability and gentleness of disposition, yet he was a man of great personal courage.

I saw that tested upon two several occasions, and he stood the test as only a man of high sense of honor and true courage could. There was in his character such a combination of strength and force with great tenderness and amiability, as is rarely seen among men.

He was also distinguished by the equanimity of his mind, and his marked urbanity and dignity of manner. He never forgot himself in passion, and never in his speech trenched upon the feelings or rights of others.

No breath of slander did I ever hear pass his lips, nor did I ever hear him utter a word so impure that any lady would blush for its utterance in her presence. He was at all times and under all circumstances a gentleman. He had a broad charity for all mankind.

I often thought that he had one rule from which he never departed. That was to always say the best that could be said of every one; and there was no man so low or worthless but he could find something good to say of him.

His integrity of character, his fidelity to truth and to principle, I never heard questioned, nor could it be, for he was one of the most reliable men that ever lived.

In his family relations he was the most charming of men; kind hearted, considerate, affectionate, indulgent, yet just; he was all that a husband and a father should be; those who knew him best, loved him most for what may be termed the

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virtues of his private life. As a citizen it can be said that he always did his duty.

He was public spirited, and manifested it not alone by his words, but also by his acts. He did not—as so many do—live for himself, or for his family, or for his immediate circle, but he was one of those who recognized and fulfilled all his obligations and duties as a member of the society in which he lived.

But few men have ever been so sincerely esteemed and generally beloved, and their loss so mourned by an entire community as Judge Rogers.

As a lawyer he stood in the very front rank of his profession. While he made the practice of his profession a means of livelihood, yet the money was always a secondary consideration. He was thoroughly imbued with a love of the law as the noblest and grandest of all professions. He knew and benefited by its elevating influence. The sharp practices and trickery which bring discredit upon the practice of the law he absolutely abhorred.

He believed that no man could be a true lawyer, who did not become, by the practice of his profession, not only a wiser and broader minded man, but also a purer and nobler character. He was a cautious and prudent counselor as well as a zealous advocate.

In his intercourse with his brother attorneys he was always courteous, frank and honorable, and his word was as good as his written stipulation.

After a long and highly successful career as an a attorney, ripe in experience, he was called to the bench of the Circuit Court of this county. It has been said that some men are born to be judges. He appeared to fall into the position as naturally and easily as any man I ever knew.

The natural impartiality and equanimity of his disposition, and his great kindness and urbanity of manner seemed to fit him for the bench, and enable him to preside with great ease and dignity. He always drew a sharp line of distinction between true dignity and austerity of manner.

While no attorney ever felt embarrassed in his presence, none ever forgot that he was in the presence of the court. He

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was fairly worshiped by the younger members of the profession. He had for the young attorney always a kind manner and words of encouragement.

I remember one young attorney who had met with many discouragements in his endeavor to get "a foothold at the bar," who, upon meeting him one day, and asking how he was succeeding, replied, while his eye brightened, "I think now I shall succeed. I tried a rather difficult case the other day before Judge Rogers, and after the trial was over and while the jury was out, he called me up to the bench and said privately to me, 'Young man, you tried that case very well indeed, and I hope I shall often see you in my court.'"

Every young lawyer went before him with confidence, that if his cause was just, if the law was on his side, he was bound to be successful, no matter how old or experienced his opponent might be.

In addition to his other admirable qualities for the position, he was a profound judge of human nature, and appeared to know by intuition the hidden and secret springs of human action. His success appeared to be assured almost from the day he ascended the bench in the year 1870. He soon acquired such a reputation for absolute impartiality and ability that there was no attorney, or suitor, but was pleased to have his case come before so able and upright a judge.

He feared no man's face, and no person, suitor or attorney, ever had any special favor in his court. He saw no names upon his docket except, as indicating who was the plaintiff and who the defendant. He was possessed of and practiced great patience, and remembered the advice of Lord Bacon, not to be guilty of "an impatient and catching hearing of the counsellors at the bar," "nor of an impertinent flying out to show learning."

He always gave the closest attention in the trial of a case. He appreciated the truth, that inattention in a judge is a crime against justice, a crime not punishable by any statute law, yet nevertheless a malfeasance in office; because no judge can know the law unless he knows all the facts of the case. There is no truer maxim than "that out of the facts the law ariseth."

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In a city of hundreds of thousands of inhabitants, with its extensive commerce and great and varied interests, it was inevitable that cases involving questions of great importance should come before him.

(Judge Tuley here detailed and commented upon a number of the decisions of Judge Rogers, and proceeded as follows:)

After my elevation to the bench, in 1879, I was drawn into still closer and more intimate relations with Judge Rogers. Judges Rogers, McAllister, Moran, Barnum and myself were elected after a very heated and exciting contest.

We were thrown much together by reason of our frequent consultations in matters connected with the public interest, and we found in Judge Rogers, at all times, a most able and judicious adviser. While never assuming to control, for he was as modest as he was able, his always clear insight as to the point in issue led us to prompt and correct conclusions.

Utmost good feeling and harmony prevailed. No doubt, no distrust, no envy, no jealousy, had any place in our midst. We gloried in each others successes, and the reputation acquired by one seemed to be, as it were, the joint property of all.

We found Judge Rogers to be a man of strong friendship and great affections. He gave us both, and what he gave us we returned as best we could. We became very much attached to him, and when the dread news, one day in January last, spread like wild-fire through the corridors and court rooms of the court, that Judge Rogers had fallen dead in Gossage's store, the news struck a pang to the hearts of his brother judges, second only to that which struck the hearts of the loved ones at home.

He has passed away from among us, leaving only the influence of his great and noble life. Who can estimate the far-reaching and beneficial influence of such a life? I shall not attempt to state it as it needs a more eloquent tongue than mine.

I can only say in conclusion that his judicial career gives us a model that any judge might be proud to follow, and that his professional life, as an attorney, is worthy of all imitation by the members of the legal profession.

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POLITICAL STATUS OF WOMAN IN NEW YORK AND AT COMMON LAW.

The profession and the country have been surprised by the news that a woman voted at the last New York general election, and that efforts in both Federal and State courts to punish her therefor—to make, as was boasted, a "test case" that should keep other women from voting—have wholly failed. The Federal authorities dropped the case on the ground that a woman's vote is no violation of Federal statute. The District Attorney of Alleghany County declined to frame an indictment against Mrs. BARBER, of Alfred Center, and the grand jury dismissed the complaint against her, because no State law could be found which she had infringed. These results, which two years since scarce any one thought possible, attract much attention.

Space will permit only to set forth a few basic facts which underlie these weighty events, and to ask for them the earnest attention of the legal profession, the law writers and the bench, as well as of the many millions of others whose rights it concerns, throughout the English speaking world.

In 1880, the Legislature of New York passed, by an overwhelming vote, a bill repealing the statute prohibiting women from voting at school elections. Afterward, in compliance with the request of the committee on the Judiciary, who had desired to be informed of the exact extent to which the legislature could go to protect the women of the State in the exer-

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cise of the right which had been declared, the writer had occasion to investigate thoroughly the whole question, as it stood both at common law, and under the constitutions and statutes of this country.

It then became manifest that, to secure woman her political rights, it was not necessary to get 700,000 men's affirmative votes for a constitutional amendment, but that the votes of 65 assemblymen and 17 senators for a repealing statute, would be sufficient. The next year, to the amazement of nearly all, a majority in the Assembly voted favorably—a thing formerly deemed impossible.

From 1880 to 1885, there was an annual effort to secure woman suffrage. It was objected that the section of the Constitution which guaranties suffrage to specified male persons, abrogates utterly the Legislature's immemorial power to regulate suffrage, and by forbidding it to disfranchise such male persons, prevents it from guarantying suffrage to any others.

This extraordinary assumption, that mere omission disfranchises a million and a half of citizens, arose from ignorance of the facts in the case; especially that in 1842—the first time in this State, women were by statute forbidden under penalties to vote at general elections.

The Constitution, in the same article which guaranties specified persons, specifies whom it debars. These sections read thus:

"SEC. 1. Every male citizen of the age of twenty-one years, who shall have been a citizen for ten days and an inhabitant of this State one year next preceding an election, and for the last four months a resident of the county, and for the last thirty days a resident of the election district in which he may offer his vote, shall be entitled to vote at such election in the election district of which he shall at the time be a resident, and not elsewhere, for all officers that now are or hereafter may be elected by the people, and upon all questions which may be submitted to the vote of the people. . . . .

"SEC. 2. No person who shall receive, expect or offer to receive, or pay, or offer or promise to pay, contribute, offer or promise to contribute to another, to be paid or used, any money or other valuable thing as a compensation or reward for the giving or withholding a vote at an election, or who shall make any promise to influence the giving or withholding any such vote or who shall make or become directly or indirectly interested in any bet or

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wager depending on the result of any election, shall vote at such election; and upon challenge for such cause the person so challenged, before the officers authorized for that purpose shall receive his vote, shall swear or affirm before such officers that he has not received or offered, does not expect to receive, has not paid, offered or promised to pay, contributed, offered or promised to contribute to another, to be paid or used, any money or other valuable thing as a compensation for the giving or withholding a vote at such election, and has not made any promise to influence the giving or withholding of any such vote, nor made nor become directly or indirectly interested in any bet or wager depending upon the result of such election.

"The Legislature at the session thereof next after the adoption of this section, shall, and from time to time thereafter may, enact laws excluding from the right of suffrage all persons convicted of bribery or of any infamous crime."

Outside these specified classes the power of the Legislature, a power which it exercised over a century before the Constitution existed, and has often exercised since, is full as ever, except that the Legislature is forbidden to take suffrage from any who once get it, save as punishment.

The power of the Legislature over suffrage had been exercised hundreds of times.

President (then Gov.) Cleveland, Governors Hill, Tilden, Dix and DeWitt Clinton, Chancellors Livingston and Kent, Chief Justices John Jay and Ambrose Spencer, and many judges had officially negatived this assumption, and the Legislature in 1778, had done the same. It was also unofficially negatived by Prof. T. W. Dwight, Commissioner of Appeals, and by Hon. Anson S. Wood, Deputy Secretary of State, who supervised the preparation of the "Election Code." The assumption was also judicially negatived elsewhere, in the only decisions involving it—three cases in 1883, before different divisions of the [Federal] Supreme Court of Utah.

The sections of the General Election Law of 1842, punishing women's voting, were repealed, and had been unconstitutional.

Why unconstitutional? This brings us to one of the great facts referred to. It must be remembered that by express constitutional provision the common law of both England and the Province, is the law of the State.

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AT COMMON LAW WOMEN WERE ENTITLED TO VOTE ON THE SAME TERMS WITH MEN.

Proof thereof is overwhelming. The first known compilation of decisions and enactments in England, was made 320 B. C. by Martia, Queen of London, whose care to establish justice by decrees and judgments, earned her the title of "the Just." In her enactments and adjudications, the principles of the common law are said to have been first formulated. This is probable. It was done nearly three centuries before the invasion of the Romans, from whose institutions the common law is claimed to have originated. Her "Martian Statutes" outlived the Roman, Anglo-Saxon and Norse invasions. Holinshed, who is generally commended as very high authority, says Alfred, the great Saxon King, who united England, and ended Danish Rule, revived her Briton laws, and put them in force over Anglo-Saxons and Danes, after twelve hundred years. Two centuries later, we find Martia's laws, under Edward the Confessor, again enacted, and continued fourteen hundred years after her reign. A century later still, as part of Edward's laws, they were again declared valid by Stephen, fifteen hundred years after they were enacted. The earliest laws, therefore, whose substance has had force twenty-two centuries, were made by a woman.

Holinshed testifies warmly to this lady's wise rule, (Bk. 3, Hist. Eng., V.)

When the Britons decided to try to expel the Roman invaders, they chose for their ruler the Princess Boadicea. Under Saxon Rule, the queens, in the lifetime of their husbands, exercised a share of the ruling power, being members of the Wita and Witenagemote—the legislative council—and as such took part in the proceedings and signed the decrees.

In the eleventh century, William of Normandy claimed and gained the English throne, and established the monarchy which exists to-day, on the ground of descent from a king's sister. Every successive parliament and tribunal since, has held the title to the crown when inherited from a woman, legal; and the English government to-day is based on a woman's title to rule.

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After the Conquest, King William for a long time intrusted his wife, Matilda of Flanders, with the government of Normandy. His son, Henry I, in his absence always made his queen, Matilda of Scotland, regent of England, and she exercised full sovereign power about half his reign. The Conqueror's son, Stephen, derived his title from a woman—the Conqueror's daughter. Stephen made this very claim which is ignorantly made to-day—that a woman cannot lawfully take part in government—the pretext for an effort to crowd his cousin Matilda, Empress of Germany, from the British throne. She resisted this claim successfully; he was forced to admit her title, and receive the crown by her gift.

Stephen's queen, Matilda of Boulogne, ruled England in his absence, and commanded the army in his captivity. Henry II, the son of the Empress, came to the throne through her title; three sovereigns within a century took title from women, while the monarchy was founding. Empress Matilda's daughter-in-law, Queen Eleanor of Aquitaine, was regent in the absence of Henry II, and was placed at the head of the government by her son, Richard I, when he went to the crusades. She arranged his marriage, laid taxes to raise his ransom, and personally went to Germany and ransomed him from captivity. Immediately on assuming the government she traveled through England, releasing all who were imprisoned for violating the forest laws, inviting back outlaws, and freeing all unjustly imprisoned. Her administration was generally and warmly praised. Queen Isabella, widow of John, prevented the crown from passing to the dauphin of France by heading her husband's troops, proclaiming her son, Henry III, king, and having him crowned.

Her daughter-in law, Queen Eleanor of Provence, was regent in 1253, and afterward, during Henry's absence in France. She became Keeper of the Great Seal, the king reserving the right to cancel any act done by any other officer; performed the duties of Lord Chancellor; held parliaments, levied taxes, compelled the citizens of London to unload their ships at her wharf, imprisoned the sheriffs, appointed a deputy, the archdeacon of Coventry, to seal writs and common legal

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instruments for her, and selected the new archbishop of Canterbury. Isabella, queen of Edward II, raised an army, defeated her husband's forces, deposed him, and ruled during her son's minority. When that son, Edward III, invaded France, he claimed and enforced his title to the throne derived from her. While there, his wife, Philippa, raised and commanded an army, and defeated the invading Scots. Queen Joanna, mother of Henry V, was intrusted by him with a share in the government during his expedition to France Her daughter-in-law, Margaret of Anjou, long conducted the war for her husband, Henry VI, against the York adherents, and is described as the real head of the government. When Henry VII became king, he first obtained a recognition as heir to the throne from the widowed queen of Edward IV, Elizabeth Woodville, and confirmed his title by marrying Edward's daughter, the heir to the crown on the side of York.

When Henry VIII left England on warlike expeditions, he appointed Queen Katharine of Aragon, and later Queen Katharine Parr, to conduct the government, and Katharine of Aragon managed the war against the Scots, wherein occurred the victories of Nevill's Cross and Flodden Field. In his will, and also by act of Parliament, the crown was assigned to his daughters Mary and Elizabeth; first absolutely, and afterward, on the birth of his son, contingently. That son, Edward VI, in turn, by solemn legal act, willed the headship of the government to another woman, his cousin, Lady Jane Gray; while another claimant appeared, the niece of Henry VIII, Mary Stuart, reigning queen of Scotland. In 1553, the crown thus lay between four women, without one male claimant.

Two women reigned for fifty years, and Parliament publicly recognized that Elizabeth could transmit supreme power to whom she pleased, if she died without children.

When her brother-in-law, Philip II, tried to oust her as Mary's heir, on the ground of her sex, Parliament rejected his claim; and the "Invincible Armada" was vanquished by Englishmen defending a woman's right to rule. Her successor, James I, gained power through the title of his great-grandmother, Margaret Tudor, and his mother, Mary Stuart.

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His son's queen, Henrietta Maria, negotiated treaties with France and Holland, and raised money and armies to support the cause of her husband, Charles I. When his son, James II, was deposed, it was by acts of Parliament enthroning the latter's daughters; their brother's claim to their place was flatly refused. In 1701, it was again denied, in favor of a woman, Electress Sophia of Hanover, granddaughter of James I. Her son, George I, and his four masculine successors obtained the throne through her. For half a century a woman has now filled it; and when Albert Edward becomes king, it will be by inheritance from his mother.

The common law, by custom, practice, and precedent, has thus fully recognized the right of women to share the highest legal power, the exercise of sovereignty. Where, as in America, sovereignty is vested in the whole people, every citizen is lawfully entitled to a share thereof—to a vote.

From the time of Ethelred, the queen as well the king was crowned. The queens of William I, Henry I, and many later kings, were crowned with special ceremony. They had separate estates and revenues, and exercised regal power in the lives of their husbands. They had their own chancellors and other officers to administer their dominions, and their own attorney-general and solicitor-general, who had equal standing at the bar with the king's officials.

Sir William Blackstone, in 1763, was made solicitor-general to Queen Charlotte.

Thus they were exempt from the property disabilities of other wives. They could sue and be sued alone, and bequeath their property by will, without their husbands' consent. Escheated estates in many cases went to them. They performed various function of government. Edgar's Queen, Elfthreytha, granted charters; as did Matilda, queen of Henry I, Empress Matilda, his daughter, and others. The later queens, Elisabeth, Mary II, Anne, and Victoria, were not only heads of the State, but also legal heads of the church.

On ceasing to be queens, by their husbands' death, they retained most of their privileges. King Edgar's mother sat in the Witenagemote, Saxon House of Lords, in 966. Eadgifu,

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widow of Edward the Elder, granted charters as queen-mother.

Another way wherein women shared sovereignty was as peeresses, etc. Tacitus says of the Britons that sex was ignored in their government. Cæsar states that their women had voice in the council and power in the courts. Gurdon says Boadicea was a member of the Briton council that resolved to expel the invaders. Ladies of birth and quality sat in the Wita, Saxon House of Lords, which elected the king. Abbesses sat in that called by Wightred, King of Kent, to meet at Berghamstead to form a new code in 694, also in that called by Ethelwolf, King of England, at Winchester, in 855. Many peeresses sat in that of 694, its decrees being signed by the ladies as well as the lords.

John, when he had been brought to terms by the barons, promised in Magna Charta to summon to the House of Lords all who held lands directly from the king; and accordingly summoned to his Parliament the Countesses of Pembroke and Essex. Thus at the very start of parliamentary government the right of women to share in the government was recognized; and it continued to be so.

In pursuance of this charter promise, in the next reign, that of Henry III, the abbesses of Shaftesbury, Berking, St. Mary of Winchester, and Wilton, were summoned to Parliament; which, as Henry forbade any one coming to Parliament unless summoned, is very significant. In the reign of Edward I, ten ladies were summoned as entitled to seats. This authoritative contemporaneous construction of Magna Charta, during the three first reigns of its existence, is conclusive of the right of women to a voice in the government. One Mounthermer, too, having married the widowed Countess of Glouces-ter, represented her in the House of Lords. Hakewel states that, except where otherwise specially provided, earldoms and baronies went to the widows, daughters, or other feminine heirs where male heirs were lacking; and they carried with them the right to a seat in the House of Lords. The call for several early Parliaments required the attendance of "all the nobles."

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April 5, 1360, 34 Edw. III, the writs for a session of Parliament at Winchester included four abbesses. The next year were summoned Marie, Countess of Norfolk, Alianor, Countess of Ormond, Philippa, Countess of March, Agnes, Countess of Pembroke, Katharine, Countess of Athol, Mary de St. Paul, Mary de Roos, and Matilda, Countess of Oxford.

As traveling was difficult, and sometimes dangerous for ladies, owing to the frequency of wars and highway robberies, they were allowed to send proxies. There are many such cases.

Elsynge, Clerk of Parliament, after careful examination of Parliamentary records from the beginning, stated, in 1625, that it had been usual for noblewomen to have their proxies, commonly husbands or sons, in Parliament. Noblemen often sent proxies; and ladies shared the privilege.

The Court of Common Pleas, in the trial of the Duchess of Kingston, held that "every privilege conferred on peers is by operation of law communicated to peeresses by blood or marriage, though only males are mentioned." Among these privileges is a hereditary share in legislation and government; which in America is now the heritage of all.

Another way whereby women at times exercised a share in sovereignty was, by sitting and voting as members of the House of Commons. Mr. T. Chisholm Austey, Revising Barrister, or election judge, of Finsbury, author of "Notes on the Representation of the People Act of 1867," states that the Rolls of Parliament in Queen Mary's time have frequent notice of the presence of women. These were probably the land owners appearing in person, instead of by representatives.

Another way was, owning manors, and as lords of these manors holding court.

Another was, voting as members of religious orders, for prioresses, abbesses, etc. While the common law was growing and developing, Catholicism was the State religion; nunneries were established and regulated by law. The superiors, as already shown, represented their constitutents in Parliament, the right of women to representation in government being thus admitted. The abbesses signed the decrees of the

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Parliament of Berghamstead, and doubtless of others. The Saxon kings could not grant certain charters without their consent. King Edgar's charter to the abbey of Crowland, for instance, was countersigned by several abbesses. They also represented their constituents in church councils, which were legal bodies. For example, the synod held in the ninth century sat in the nunnery or abbey there; and its abbess, Hilda, not only had voice and vote therein, but presided.

Another way, which seems never to have been questioned was, voting in secular corporations. In banks, insurance companies, railroad corporations, companies for trading at home or abroad, (like the great London Company of Turkey Merchants, the African Company, the Levant Company, the South Sea Company), for manufacturing, running lines of carriers, stage-coaches and vessels, and conducting many businesses—the law which has conferred their powers and regulated the use of them has always taken as settled the right of women to share in electing persons to administer those powers, in deciding who should be intrusted with them, and in enacting corporation statutes. Even in the immense Bank of England, with its enormous control of the currency and fortunes of the world, women have always shared that control.

In still more important corporations, too, has this been the case;—in the "Virginia Company" which peopled Virginia, in the company which populated part of New England, and for a time governed it, women were at liberty to take part as stockholders; in the Hudson's Bay Company, which for centuries ruled half North America, the same was true; also in the East India Company, which for about the same time ruled absolutely one of the greatest empires on earth.

After 1834, when the latter company stopped trading, and avowed itself the government of India, this continued. In 1840, Daniel O'Connell, probably the first British lawyer of his time, wrote to Elizabeth Cady Stanton, that as voters in this company, women exercised governing power over a hundred million people. In 1852, of 2,500 voters in this, probably the greatest existing government, nearly four hundred were women.

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The root of the present elective government of Britain is the self governing parish or town. This nourished the holy fire of freedom when the land was under iron rule. Thence all present British elective institutions have grown.

Domesday Book, compiled under the Conqueror, included all inhabitant householders among the "burgesses," or voters, and many of these were women. The "doom books" of particular boroughs, later, also enrolled the women inhabitant householders among the "burgesses," who had the right to vote for local officers, on the levying of local taxes and their expenditure, on the sale of parish property, etc. Besides the burgesses, others who were liable to pay rates for the church or the poor, called "scot and lot voters," and all lodges who did their own cooking, called "potwallopers," were entitled, of both sexes. In time they became free to vote for church wardens, vestrymen, overseers, assessors and collectors of poor rates, way wardens, road commissioners, poor law guardians, parish clerks, and sextons. Lord Ellenborough repeatedly declared, from the bench, that all the inhabitants paying rates, were members of the parish. The Parliamentary "Report on the Dignity of a peer," admits that before 1265, all freeholders had the right of suffrage.

This fact is well shown by Mr. Homersham Cox, who has given much labor to it. In Ashby v. White, the Court of King's Bench held that the right of election was inseparable from the freehold. In 1727, the Exchequer Court decided that women who contributed to pay a minister for Clerkenwell parish were entitled to vote in selecting him.

In 1730, the act for local government of Deptford provided that all parishioners who paid taxes or poor rates, should vote. This was the general rule; even Catholic, Jew and infidel ratepayers were free to vote in fixing church rates, or local taxes to support the Episcopal or "established" church in the parish. Soon after, Sarah Bly, widow of the sexton of St. Botolph parish, was elected as his successor by 209 votes, against 194 given for a man named Olive. He claimed that women had no right to vote, and, as forty women had voted, *viva voce*, for her, that he was really chosen. The case, Olive v. Ingram,

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was four times argued, and in 1739, decided by the Court of King's Bench, in favor of the women. Lord Chief Justice Lee said they must be presumed entitled to vote till shown not to be, (7 Mod. Rep., 264), and that even a married woman had the same right, but that as all her rights of property vested in her husband, the latter must exercise the right in her place. The Married Women's Property Acts, and other modern laws which secure her separate estate, remove all such ground for her disfranchisement in this country.

In Great Britain, as soon as she became a widow, she might again exercise the right of franchise in person. In Rex v. Stubbs, it was decided that "man" in acts relating to franchises includes women. In 1774, the Clerkenwell local government act *required* all the rate-payers to attend the elections of vestrymen, etc. In Regina v. Aberavon, women were decided to be included under "inhabitant householders," and entitled to vote on incorporating a town.

In 1835, the first time in England, was sex made a disqualification. The Municipal Corporations Act prohibited women from voting in corporate towns. The injustice of disfranchising them by hundreds or thousands when their town became a corporation—six hundred being disfranchised in Southport in 1867—the wrong of keeping ten thousand rate-payers disfranchised in Manchester, while their sisters in adjoining rural parishes voted freely, became so plain, that in 1869, this exclusion was repealed by Parliament with practical unanimity, on motion of Jacob Bright. The Home Secretary, Mr. Bruce, supporting Mr. Bright's motion for the Gladstone Ministry, told the House of Commons the proposition was no novelty—introduced no anomaly; that in every form of local government but this, women were allowed to vote.

In the House of Peers, Earl Cairns, afterward Lord Chancellor, and the other "law lords," indorsed the repeal. In that year there were seventy-eight non corporate towns, not parliamentary boroughs, with 6,000 to 20,000 population each, wherein "every rate-payer voted." In this year also, after the repeal, women voted in ninety-five corporate towns, in about the same proportion as men. In 1872, in sixty-six such

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elections reported, more than half the women freeholders voted; where the elections were contested, over 14,000 voted. Meanwhile the Public Health Act in 1848, and the Elementary Education Act of 1870, recognized women's immemorial right, and secured them the exercise thereof, in elections for members of local health and education boards.

In 1884, the number of women entitled to vote at local elections in England and Wales was reckoned at 740,000; single and widows.

When self-government in national affairs began to be arrested from the tyrants who ruled after the conquest, it was the voters of these local self-governing communities who demanded and gained representation in Parliament, and whose representatives formed the House of Commons.

Mr. Homersham Cox, already mentioned, has investigated very carefully the question what were the qualifications for voting for members of that House, and shows conclusively that they were the same as for local elections.

In many Saxon representative assemblies women shared the authority as members, and were probably chosen in part by their sex. Before the House of Commons was established, the call for the first Parliament directed the burgesses of boroughs (towns) to send members to meet with the Lords—not the *male* burgesses only, but all. In 1265, when the House of Commons was first separately chosen, the Parliamentary "Report on the Dignity of a Peer," states that all freeholders were free to vote for county members or "knights of the shire."

In 1268, the Statute of Marlbridge was passed partly to exempt women of religious orders from attending the "county courts of election" or mass meetings where these members were chosen; showing that other qualified women were expected to attend, and that these women had attended.

Cox states that the knights were chosen in this mass meeting, commonly by a mere show of hands, a mode of election still in use, unless a poll is demanded, and that they were chosen by all the free inhabitants liable to taxation.

Stubbs in his Constitutional History states that the right was so free that every person who attended the "county court

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of election" could vote; which, when the voting was done by merely holding up the hand, was easy. In 1295, the writs for election of members, directed that they be chosen by the "whole community."

Cox says that in the reign of Edward I, and long after, the parliamentary electors in most boroughs were the resident householders liable to pay "scot and lot;" (local taxes.)

In 1372, and again in 1376, Edward III ordered that the "knights of the shire" be chosen by the whole people of the county at the "county court of election." In 1406, Parliament decreed that all persons present at the county courts, for any purpose, should attend the "courts of election," and should seal the election returns or "indentures." That the law makers meant what they said is clear, from the fact that one "indenture" in 1411 bore, among the seals of the persons electing a member, that of Lucia, Countess of Kent; while another in 1414, bore that of Margaret, Lady Vavasour. In this year Parliament reaffirmed the principle of the law of 1406, declaring that this act embodied "the antient custom of the kingdom."

Prynne, writing on another subject, incidentally shows that between 1399 and 1483, many women were voters in the county of York. Lord Chief Justice Holt, deciding Ashby v. White, states that for more than two centuries—1215 to 1430—every one who had a freehold, however small, was a voter. The statute of 1430 expressly provided that county members should be chosen by the people who had freeholds, worth at least 40 shillings a year.

In 1445, Parliament declared that the electors in cities and boroughs were the citizens and burgesses, no portion being excluded. In 1553, Mrs. Elizabeth Copley joined with the other inhabitants of Gattonborough in electing a member, and attached her seal to the return among theirs. In 1554, as head of the family which owned all the land in the borough, she claimed and used the power to elect the member by herself, without her tenants. She again, no tenant venturing to contest her claim, made this election in 1555, the summons to elect being now addressed to her. About the same time Dame

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Dorothy Pakington, as sole owner and voter of Aylesbury, elected two members, her return empowering them to act "as fully and wholly as if I were present."

In 1577, three women were enrolled as burgesses, entitled to vote for members at Lyme Regis. In 1612, the Court of King's Bench, in Catharine v. Surrey, also in Coates v. Lyle and Holt v. Lyle, decided that a woman with the qualifications required of a man was entitled to vote. These decisions were reported and indorsed by the great lawyer, Hakewell. In 1624, the Committee on Elections in the House of Commons, including such members as Hakewell, Selden, and Colton, as well as other great lawyers, reported, in the Pontefract case, a resolution that all the inhabitants, householders and residents of a borough were legal voters; which resolution the House adopted. It was probably because of this resolution that the Gatton tenants disputed the disfranchisement which they had suffered at Mrs. Copley's hands. The same committee reported a resolution, which was passed by the House, March 16, 1628, disallowing the Copley claim, and declaring the right of voting to be in "all the inhabitants of Gatton;" not in the *male* inhabitants.

In 1640, women voted for county members in Suffolk, being induced to do so by the candidates.

In 1695, the same committee reported that all who provide for themselves are entitled to vote. The act of Parliament, 1726, recites that the right of election in some boroughs is in "scot and lot" payers, potwallopers, inhabitant householders, and housekeepers—the same classes as were entitled, without destinction of sex, to vote for local officials.

In 1765, Judge Blackstone, who had long been professor of law at Oxford, published his famous compend of English law; and in giving the qualifications for voting, omitted sex; in enumerating the cause for exclusion from voting for county members, he also omitted sex; which omissions, in view of his great familiarity with the details of law, are conclusive. All writs of election, before 1832, summoned the freeholders, without sex distinction, to elect members. The Reform Bill of that year preserved all ancient rights of suf-

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frage to both sexes, thus again recognizing the common law right. It repealed the old disfranchising statutes as to numbers of men, but left them in force against the classes of women they had debarred.

The "Representation of the People Act" of 1867, and the "Parliamentary Franchise Act" of 1884, repealed more and more of the disfranchising acts concerning men, but still left them in force against the women of the same classes.

In 1867, Lily Maxwell was registered, and voted, in Manchester. In 1868, the District Revision Court of Finsbury, Mr. Revising Barrister Austey presiding, decided that under the Representation of the People Act, women were entitled to vote because of their common law right, and placed the name of Jane Allen and many other women rate-payers on the parliamentary registry of St. Giles-in-the-Fields parish. Fifteen women voted. His example was followed in Aberdeen, Cockermouth, Salford, Winterton, and many districts in Lancaster, Middlesex, Kent and other counties. Twelve women voted in Gorton, ten in Levenshulme, nine in Manchester, and many elsewhere.

The practice has not been repeated, because the courts have held that the statute of 1867 did not bear such construction. This was true, since John Stuart Mill's motion to make the act repeal the disfranchising statutes regarding the women of certain classes, as well as those relating to the men of the same classes, had been distinctly rejected in Parliament. In the Crossthwaite case, in Ireland, in 1867, the judges, while differing on other points, agreed that the right to a municipal vote carried parliamentary franchise with it.

In another most important direction, has this ancient, equal right been recognized. In that noble event, one of the grandest of the present century, the deliberate return to Home Rule, to local self-government, to long oppressed millions in India—the municipal suffrage acts put women on like footing with men; Hindoo women vote at elections, in Bombay and elsewhere, under British law.

In other ways the common law acknowledged the principle. Disfranchising acts were passed repeatedly; but only once, in

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all these centuries. in case of the Municipal Corporations Act of 1835, was sex made a disqualification.

Cases involving the point were repeatedly before the courts. Never till 1868 was there a hostile decision; the two then given were mainly on the meaning of a statute. Their bearing on common law is not important. They were by an inferior tribunal, the Court of Common Pleas, whence, by a statutory defect, there was no appeal, and which had not power to overrule the time-honored decisions of the King's Bench, two hundred and forty-six years before.

Despite local, legal difficulties, the Irish judges, of English creation, in 1867 held, unanimously in the lower court and by a majority of the higher, that women were entitled to municipal suffrage in Ireland; though the absence of two or three judges enabled a minority to reverse the decision of the lower court. Many elections were held under customs, without any statute; never did any such custom exclude women.

No great law writer has ever held women excluded, but Coke; this is in the fourth volume of his institutes, less trustworthy than the earlier. It purports to have been written in 1607; but this statement about women was quickly negatived by the King's Bench decisions of 1612, and the editor of the posthumous publication would have done well to excise the passage; the more, as Coke's resolution to the same effect was overwhelmingly rejected in 1620, by the House of Commons, which soon after passed the resolutions of 1624 and 1628, just the reverse. Revising Barrister Austey, giving judgment in favor of Jane Allen, and other women, at Finsbury, in 1868, stated that "Incapacity of mere sex did not hold in *any* constituency" at any time. The rights of man declared by Magna Charta have by general, continuous construction been held to be shared equally by both sexes. The law of penalties applies equally to both. In early Norman times disfranchised persons were exempted from paying taxes; never was any exemption made of women—they did not need it, not being excluded. Lord Brougham's Act, sometimes called Romilly's, provides that "man" shall always include woman. Except in

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a few cases, women have been treated as eligible to office, and many have held it. The Married Woman's Property Act has stopped the vesting of wives' estates in husband's names, and enables the wife to vote in person.

Lord Chief Justice Holt, in deciding Ashby v. White, declared "the right of election an original right, inseparable from the freehold." The learned Hooker lays it down as a maxim that "law, to bind all, must be assented to by all." The great lawyer, Granville Sharpe, says: "This privilege of a share in the legislation is a natural right, which cannot, without the most flagrant and stimulating injustice, be withdrawn."

Solicitor General Coleridge argued Charlton v. Lings for the women in 1868, and expressed himself emphatically that their claim was good. He is now Chief Justice of England; and were the matter brought before him, would doubtless follow the precedents made by his predecessors in 1612 and 1739. Women now have suffrage in England for every elective office but member of Parliament.

In New York the common law of the province also recognized the same equality. From the day when Lady Deborah Moody, in one of the first concessions of local self-government, was authorized by the Governor and Council to vote for town officers, and for taxes and ordinances of Gravesend, Long Island—being later empowered to elect all the town officials by her sole vote, which, the men all being disfranchised, for years she did—to the last provincial legislature in 1775, never was an act empowering the freeholders, then the only voters, to choose local officers and members of Assembly, passed without applying to both sexes, equally, except that the wife was represented at the polls by her husband.

Never, among all the disfranchising acts in those 130 years, was sex made a disqualification. The first call for the choice of an Assembly under British rule, Gov. Dongan's proclamation, in 1683, directed "all the freeholders" to vote The Assembly so chosen enacted, in the "Charter of Liberties," approved by the English governor, Oct. 30, 1683, that "every freeholder within this province" should vote for members of

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Assembly, and that "by freeholder is understood every one who is so understood by the laws of England." This included many New York women.

In 1691-2, this was re-enacted, and made to apply also to town officers. The charters of New York City, granted by Governors Dongan and Montgomerie and the act incorporating Trinity Church, are among other provincial acts which allowed suffrage equally.

In 1777, the framers of the State Constitution—which is still in force being merely revised in 1821 and in 1846, re-established the same equality, by providing for the election of governor, lieutenant-governor and senators by the freeholders, women included.

Afterward the word "male" was introduced, and then as a guaranty of the male rent-payers' right to vote for Assemblymen; the Legislature being left as before free to guaranty it to women beyond this point, or to exclude them, and the property-holding women being secured by other constitutional provisions. The Constitution further provided that the common law of both England and the province should, except where altered by the Legislature, be the law of the State; and forbade the Legislature to take away the common law right by providing that "No citizen of this State shall be disfranchised, or deprived of any of the privileges secured to any citizen thereof by this constitution," save by express constitutional amendment or as penalty after trial and conviction; and that "No person shall be deprived of liberty without due process of law."

As if to prevent possibility of misconstruction, the Legislature, in 1787, in the Bill of Rights, enacted that "No citizen of this State shall be disfranchised of his *or her* freehold or liberties, or free customs, but by lawful judgment of his or her Peers," etc.; and that "No person, of what estate or condition soever, shall be put out of his *or her* franchise or freehold, unless he *or she* shall be duly brought to answer," etc. This legislative contemporaneous construction is conclusive as to the meaning of these provisions, preserving women's common law right, which have been in force ever since.

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There was much other contemporaneous construction. The first legislature under the Constitution, in 1778, passed an act partly declaratory of the meaning of the Constitution, and partly regulating suffrage outside the scope of that instrument. It excluded about twenty classes from voting, but did not exclude women. Constitutional amendments have since been made, excluding certain persons, but these do not exclude women; many disfranchising acts have been passed, but only seven have excluded women; the town meeting acts of 1787, 1801 and 1812, which abolished the disfranchisement of classes of men but confined the abolition to them; the school acts of 1841, 1864 and 1867, which did the same in school elections; the General Election Act of 1842, which put a penalty, the first time, on woman's voting at State elections. The more important of these exclusions were violations of the grand constitutional provisions just cited, and all have been repealed. These very acts really acknowledged the existing right, by carefully forbidding the exercise, in the cases specified.

The Legislature between 1777 and 1821, passed many acts extending suffrage, and these, except those relating to militia, firemen and Indians, applied equally to women. The first general school act, in 1814, directed that every person liable to pay school tax be personally notified to attend and vote at every school election. All this contemporaneous construction settled the fact, if settlement were needed, that the ancient right was preserved.

In 1821, an article on suffrage was, for the first time, put in the Constitution, which guarantied the men who had been enfranchised by statute against being disfranchised in the same way, but expressly continued the legislature's power to inflict disfranchisement as a penalty. This guaranty of course did not impair any existing right in persons to whom it did not apply.

The Constitution has never forbidden idiots, lunatics, paupers and drunkards from voting. Till 1821 it had not forbidden law-breakers. It is now claimed by some that the Constitution has inflicted on the wives and daughters of our citizens a political degradation which was prescribed as a

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penalty for convicts, and has placed them below the mentally and morally deranged.

Why, then, are women not generally voting? Before the passage of the "Married Women's Property Acts" only the few spinster and widowed freeholders could personally vote. When the freehold qualification was abolished, the mass of men rushed in to take possession; the masses of women, ignorant of their rights and needs, and sometimes intimidated, held aloof. The impression prevailed, from ignorance of the existence and repeal of the disfranchising statutes, that the Constitution debarred women hopelessly. But common law holds that, though privileges may be forfeited by non-user, rights cannot. Hence no amount of laches, desuetude or disuse can affect woman's right of suffrage in these States.

A million and a half of the citizens of the State of New York are free to exercise their right of self-government, as fast as they can gain practical possession. Not only so, but wherever common law institutions exist—in forty States and Territories of this Union, in Canada, New Brunswick, Nova Scotia, Newfoundland, Manitoba, British Columbia—from the Florida Keys to Bhering's Strait—from Prince Edward's Island to Vancouver—in Jamaica, Trinida, Guiana, the Bahamas and Bermudas, Cypress, South Africa, New Zealand, the Empire of Australia—around the globe, wherever common law has force, and no indisputable prohibition exists—women are lawfully free to vote.

Hamilton Willcox.

[See the card of Mr. Willcox in this number of the TIMES.]

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LAW REFORM
IN PLEADING AND PRACTICE IN CIVIL CASES.

The cumbrous, clumsy and unmanageable system of pleading in common law cases, with which the State of Illinois has been afflicted for over half a century, certainly calls for discussion among the profession, with a view to amendment and above all to simplification.

This is an age of reform. Many of the old cobwebs of the past have been swept away.

When we look around us and see what Illinois is at the present day and what it was half a century ago, the mind can hardly appreciate its amazing, almost unparalleled progress and success in all the elements of national prosperity.

The spirit of the age calls for improvement in every domain of human action, and while the demand has been promptly responded to generally, it seems almost inconceivable that in the great domain of law things have remained practically at a stand-still.

The object of this article is to direct attention to a matter so long neglected, and to suggest at least a few of the many urgently needed reforms, in the hope that the efforts of the profession and of the Legislature may be applied to this great grievance, and that something at least may be done in the way of a much needed improvement.

Ever since the organization of the courts of this State, up to the present time, there has been in use the old, and elsewhere mostly abandoned, common law system of pleading embodied

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in a practice most antiquated, and in forms and precedents verbose, voluminous and tautological. Why should they be retained when progress and improvement are advancing with such giant strides on every hand?

Let it not be understood, however, that the object of this paper is to favor the adoption of a code. The writer is and always has been opposed to codification. He desires merely to suggest some much needed amendments, especially in pleading.

Declarations may be greatly simplified and abbreviated. All useless and redundant allegations, now so profusely scattered through them, should be eliminated and a brief, plain and easily understood statement of the plaintiff's cause of action substituted.

All matters of defense should be specially pleaded. The present "general issue" in actions upon contracts, at least, should be abolished, and thus the plaintiff will be advised by the defendant's pleas, what defense or defenses it is intended to rely upon.

To illustrate.—If a suit be brought upon a note against an indorser, instead of pleading as at present the "general issue" which affords the plaintiff no information as to the character of the intended defense, the defendant might plead specially, denying the making of the note by the maker, or the indorsement by the defendant. He might deny the insolvency of the maker, or the commencement of a suit to the first term of the first court after the maturity of the note. He might plead payment, which is now admissible in evidence under the general issue, set-off, release, accord and satisfaction, fraud, statute of limitations, or any special defense available; but in his pleas he should inform the plaintiff of the character of the defense sought to be interposed, and should not be permitted to present any at the trial not embraced in his pleas; and thus the issue or issues to be passed upon by the court or jury would be sharply defined.

This, in other words, would be substantially the adoption in this State, of what were known as "The New Rules of Pleading," brought into use in England, nearly fifty years ago. A better system never was devised.

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These rules, as to the presentation of every defense by special plea, might well be extended to "actions ex delicto."

Under the present system, in actions on the case, the plea of "not guilty" is the most comprehensive that can be imagined; almost every possible defense being admissible under it. The plaintiff necessarily is entirely unadvised by the pleading of the character of the defense which he is required to meet.

Another and very necessary and substantial reform, would be in simplifying and consolidating in one action the procedure against parties liable primarily and collaterally, on the same instrument. Take for example a maker and several indorsers upon a promissory note. Under the present system a separate action must be brought against each. This is unnecessary and needlessly expensive both to plaintiff and defendants. One action against all jointly, with a declaration in substantially the following form would suffice:

"That A. B. on etc. at etc. made his note payable to C. D. or order, who indorsed and delivered the same to E. F., who indorsed and delivered the same to plaintiff. That the time of payment specified in the note had elapsed before the commencement of suit. That the note was duly presented to the maker at maturity, and payment demanded, which was refused; and of which the other defendants (the indorsers) had notice; or that at the time of maturity the maker was insolvent.

"By means whereof all of the defendants became jointly and severally liable to pay to the plaintiff the amount, etc."

Thus the plaintiff would get his judgment against all his debtors in one suit.

Many other instances might be given, but want of space forbids. They will readily suggest themselves to the profession.

The cardinal points are, the presentation of the plaintiff's cause of action in concise form, and of the defendant's defense, whatever it may be, by special plea, the simplification of litigation, and the saving of time and expense.

These suggestions are thrown out simply for the purpose of

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directing attention to a much needed and long neglected reform, and in the hope that members of the profession will consider these questions, and present their views. If any better plan can be devised to effect the purpose indicated, the writer of this article will certainly be glad to see it adopted, and thus, in the language of one of our most thoughtful practitioners, "with such a spirit, progress will be sure, and will finally result in a greatly improved method of Judicial Procedure."

Robert Hervey.

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HALF-CENTURY ANNALIST'S LETTER.

LETTER TO THE SOCIETY
OF THE ALUMNI OF HAMILTON COLLEGE
FOR THE ANNUAL MEETING OF JUNE 29, 1887.

From Hon. WILLIAM W FARWELL, of Chicago,
Professor of Equity Jurisprudence, Pleadings and Practice, in Union College of Law.
OF THE CLASS OF 1837.

It is a good thing to have graduated at some respectable institution of learning. It is true one may be well educated and *learned* even, although he has never completed a collegiate course or received the degree constituting him an alumnus. Knowledge and ability do not depend upon the honors or titles which a college can bestow. In some cases college honors and college degrees prove an injury rather than an advantage. Those upon whom they are bestowed may attach undue importance to them, and may, when they enter upon the business of life, rely upon them as capital, instead of regarding them as mere signs and advertisements.

Still, there is a substantial advantage in having satisfactorily completed the usual collegiate course and received the usual degree. It raises a presumption in one's favor. The diploma is a letter of introduction from persons of the highest standing, as the instructors and guides of youth in learning and in morals. It is to the effect that the recipient is a good scholar and a good man, and that his capacity, character and learning are such as to fairly entitle him to enter the ranks of those who are aiming at excellence in the higher walks of life. Such a diploma is like the stamp of government upon the gold and silver of the currency. Such stamp adds nothing to

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the intrinsic value of the precious metal, but it shows how much there is of it and what it is worth, and renders it universally receivable.

There is another advantage in being a graduate. Thereby one is admitted to a large and respectable society, the *Society of the Alumni.*

They are brethren for they have a common *Alma Mater.*

It is a good thing to be born, but it is very much to be desired that if one is born at all he should be born legitimate. We are not waifs or strays, having no parentage worth mentioning, and no home to revisit.

We can gather annually around the sacred hearth-stone, and, forgetting intervening years, grow young again, as we recall college life and college friends. Not only so, but the scattered children can meet annually in groups at points far distant from their college home, and far distant from each other, and revive and kindle to a glow the memories and affections of those early days—days never to be forgotten, but alas! days never to return. When I was in

HAMILTON COLLEGE, FIFTY YEARS AGO,

the college buildings were not hidden by trees as they are now, but were conspicuous objects, and could be seen many miles away. Frequently the valley of the Oriskany would be shrouded in mist or fog leaving the hills bright in the sunshine. At such times the chapel and other buildings could be plainly seen from the distant highlands, although the intervening country was hidden.

In like manner as I look back over the fifty years which separate me from college life, and live that life over again in memory, the scenes and sounds of half a century are forgotten or lost sight of, and I see and hear only what I saw and heard during the four years I was in college.

I see each member of the faculty, and I touch my hat as of old, with unfeigned respect. I see my classmates and companions, and recall the looks, the language and the laugh of many of them. I hear the morning bell calling to antelucan prayers and recitation, and with an incomplete toilet I start for the chapel on a run.

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College friends and acquaintances are never forgotten in after life. And this includes not only such of the faculty and students as may be well known to us, but also a large company of superior beings, who become known to us through their writings.

At college I was formerly introduced to Homer and Horace, to Thucydides and Tacitus, and to many other eminent authors of old Greece and Rome. I became somewhat acquainted with them, and formed a very high opinion of them, but I soon found that I had no peculiar aptitude for acquiring a knowledge of any dead or foreign language, and that I could not hope to ever become so familiar with those authors as to be able to fully understand their meaning or to appreciate their literary excellence; and I therefore never got on such intimate terms with any of them as would admit of my claiming acquaintance when meeting afterward.

There I became acquainted with Shakespeare and Byron, with Coleridge and Keats, with Milton and Cowper, with Gray and Bryant.

I became intimate with Lamb and Hazlitt, and they are still my companions and friends.

For a time I had a voracious appetite for the novels of Cooper, Marryatt, James and Bulwer, but after a while it got cloyed, and I am not sure that I should now relish any of them.

I found Addison and Irving charming company, and I still turn to them when I wish to see "apples of gold in pictures of silver."

The "Wizard of the North" introduced me to the Crusaders, and I still like to read Ivanhoe and the Talisman.

And last but not least in the list comes Charles Dickens. My acquaintance with him dates back to my senior year. He had just begun to introduce to the English-speaking world his children—the creations of his genius—and to show that world what miracles could be wrought by means of its language, and to demonstrate that there is no art that can compare with the art of using words.

And here a word as to college sports and amusements.

Our tastes were simple. Our wants were few.

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In the winter we snow-balled on the college grounds or from the college roofs; skated, slid on the ice, slid down the hills and sometimes took a sleigh ride to Utica or to some neighboring village.

In the summer, on the half holidays and during examination weeks, we took long walks across the fields and through the woods, and frequently visited the well known bathing-pool in tne Oriskany, southeast of College Hill, and if I remember rightly, some of us had, as Shakespeare says, "a kind of alacrity in sinking."

We pitched quoits and played ball, but our balls were not the deadly missiles now known by that name, but were made from old stockings and were covered by the village cobbler.

We had no boat club or base-ball club or gymnasium. We had no umpire to decide our disputes. We needed no surgeon or chaplain to be in attendance for fear of accidents. Accident policies were not known in those days. * * *

Hazing was not studied as a science, nor was it practiced as a fine art. Sometimes some of the "sophs" would "smoke out" an unsophisticated freshman, but the whole proceeding took on a social and friendly aspect, and no great harm was done or intended. * * * *

And now permit me to advert to some of the principal subjects of interest to us in those days, in

POLITICS, MORALS AND RELIGION.

President Jackson, having been re-elected in 1832, had entered upon his second term. The whigs, or national republicans, as they were then called, had supported Clay. The antimasons had voted for William Wirt. South Carolina threw its vote for John Floyd.

President Jackson having during his first term inaugurated a system of civil-service reform founded on the principle that "to the victors belong the spoils," he was very popular with his party, and could generally rely upon his subordinates to act in accordance with his wishes. He had been accustomed to command, rather than to ask advice or to receive it, and he carried into the administration of civil affairs the ideas and methods of military life. He was honest, fearless, quick to

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make up his mind and slow to change it, and prompt and energetic in action. He had declared war against the United States Bank and peace was not proclaimed until after the Bank had expired.

When Calhoun and the other nullifiers of South Carolina had threatened secession if things did not go to suit them, Jackson informed them that if they went on as they had started they would be traitors and rebels, and would be punished as such; and he sent ships of war to Charleston so as to be ready for them.

Webster was engaged in expounding the constitution, but Jackson claimed the right to construe it for himself, and was not convinced by the reasoning of Webster, nor did he feel himself bound, when called upon to act as a co-ordinate department of the government, by the decisions of the Supreme Court.

Clay was the champion of the United States Bank, and was the earnest advocate of a protective tariff and of internal improvements by the general government, and was fertile in compromise measures to reconcile conflicting interests

Benton, on account of his radical views on the currency question, was called "Old Bullion," and on account of his persistent and successful efforts in vindication of the president, was called the "Great Expunger."

John Quincy Adams was insisting not only upon the right of the people to petition Congress, but also upon the duty of Congress to give their petitions a respectful reception and proper consideration.

In March, 1836, Texas proclaimed her independence, and large numbers of sympathizers in the Southern States flocked to the standard of Houston, and we soon afterward heard the shout,

"Santa Anna tree'd
And Texas free'd."

The temperance reform was gaining in strength and numbers and its friends were beginning to advocate and insist upon total abstinence from all that can intoxicate.

The slavery question came to the front. Most people in the Northern States looked upon slavery as an evil, but compara-

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tively few were agreed as to what should be done to remove it. The scheme of the colonizationists was discussed a good deal, and had the indorsement of many persons of wealth and influence. They proposed not only to gradually remove slavery in this country, but also at the same time to civilize and Christianize Africa by Jenner's method. They took some of the vaccine virus from this country, and inoculated the dark continent, at Liberia, and said, "Wait now, don't be impatient; give it time to work."

The Abolitionists ridiculed this scheme and denounced it as a fraud and a delusion. They insisted that slavery was wrong and an injury to the country, and that it should be abolished in some way. They were told to keep still and to mind their own business, but they kept on talking, notwithstanding. In some instances their meetings were broken up and their leaders were mobbed, but they could not be silenced.

In religion, William Miller was beginning to attract attention. He was confident that the Second Advent was near at hand, and he was zealously endeavoring to convince the public of the correctness of his views, and to prepare them for the momentous event. Many good people were converted to his views, and confidently expected to be caught up to meet their descending Lord in the year 1843, and many others felt no little anxiety on the subject, for they were not sure but that Miller was right in his calculations, while they were conscious that they were not altogether prepared for such an event.

* * * * *

In 1835, Jackson named Van Buren as his successor and political heir, and at the presidential election in 1836 the people confirmed the appointment. In March, 1837, Van Buren took possession and found himself at the head of a great army of officeholders, but he found that his inheritance had been heavily encumbered by his predecessor, and that the mortgages were about to be foreclosed. He found that Jackson's headstrong course, and his disregard of the opinions of his opponents upon financial questions, were followed, as they had predicted they would be, by general confusion and disaster. The country was flooded with bank paper, specie payments were

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suspended, the currency depreciated and much of it became worthless; business was at a standstill; general alarm and disgust prevailed throughout the country.

A large number of the students attended the convention which met in Utica in October, 1835, for the purpose of forming a State Anti-Slavery Society It was broken up by a mob headed by prominent politicians, and on the invitation of Gerrit Smith, withdrew to Peterboro to complete its business. Smith had previously been an earnest and liberal colonizationist, but the demonstrations of that day converted him to abolitionism. Spencer Kellogg was at that time Mayor of Utica, and endeavored to preserve the peace and to prevent the mob from interfering with the convention, but his authority was disregarded and he was rudely treated. I happened to be on the sidewalk in front of Kellogg's store on Genesee street as he returned from the scene of the disturbance. His coat was partly torn off from him, and his whole appearance indicated rough treatment. Gerrit Smith had him by the arm and was inquiring of him if he was seriously injured.

These are some of my recollections of college life and of college times. I might say much more, but I have already said enough. The half century letter of 1883, faithfully describes the college buildings and their surroundings as I remember them. I attended that commencement of 1833, of which Mr. Seward speaks, having been examined for admission to college the day before by Professor Simeon North.

Junior exhibitions and commencements were important events in those days, and were largely attended. I recall, as though it were but yesterday, the commencement of 1837, when I "spoke my piece" and received my diploma. I see the long procession headed by the Utica Brass Band, and marshaled by Sam Foot. I see the stage occupied by the trustees and faculty and distinguished friends of the college. I see the audience filling the church to overflowing, and composed of the best of people. The programmes are distributed, prayer is offered, the band plays, and at length the audience, amid a great rustling of silks and fluttering of fans, and display of bright colors, becomes composed, and the spectacled eyes of the

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old and the bright eyes of the young look at the programme and at the stage to see what comes next. It seems to me that I could again step forward and, after bowing to the stage and to the audience, repeat that "piece" word for word, as I repeated it fifty years ago. But, alas! the same audience would not be there. All of the faculty and all but one of the trustees have joined the "silent majority." If any of the friendly faces should have a familiar look, it would be because men and women and boys and girls sometimes look as their fathers and mothers, or grandfathers and grandmothers looked at the same age. Of my own class of sixteen, at least eleven would be missing, and the speaker, instead of being a smooth-faced youth of twenty, would be a gray-haired man of seventy.

IN CONCLUSION.

I may remark that our interest in and affection for our *Alma Mater* do not depend upon her age or her possessions or the number of her graduates. She may have rivals who surpass her in one or more of these particulars. Still she, and she alone, is our "nourishing mother." "Honor thy parents" is an old commandment. No new discoveries or changing fashions can make it obsolete. We delight to honor our *Alma Mater*. We "rise up and call her blessed." There she stands on College Hill, fair to look upon, beautiful as the morning, stretching forth her arms and proffering assistance to such as have a thirst for knowledge, or a taste for learning, or a desire to become eminently useful, or an ambition to rise above their fellows.

She is constantly gathering in from the farms and villages and cities of Central and Western New York, many worthy and promising young men, who would not be able or might not be inclined to go elsewhere for a liberal education. As for myself, I owe her a debt of gratitude for the opportunities she afforded me, which I can never repay, for I have no reason to suppose that if I had not entered Hamilton College I should have entered any other. She introduced me to a world which I otherwise might have never known, extended my horizon, taught me to be liberal in my views and charitable in my

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judgments, developed in me new tastes and disclosed to me new sources of enjoyment.

Our natural parents leave us. The old homestead may pass into other hands and be cut up by railroads or disfigured by smoke-stacks or derricks. We ourselves may be buried by strangers or by those who will soon forget us. The head stone that shall mark our grave may at length disappear, and no one may be able to point out our last resting place; but we know that our *Alma Mater* will remain on the old homestead and that she will not forget any of her children. She will be slow to observe, and unwilling to hear of our weaknesses or failures, but she will be quick to perceive and pleased to hear of anything to our credit. She will take pride in whatever we may say or do indicating that her degrees are worthily conferred, and when at last "life's fitful fever" is over, she will give us an obituary notice in the records of the necrologist, and will place our names among the stars in the triennial catalogue, there to remain forever.

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NOTED EMBEZZLEMENT CASE.

Not all cases which are of interest appear in the printed reports, or are tried in courts of record. Few lawyers, probably, have ever stopped to think, and the vast majority of citizens would scarcely have believed, so disconsonant is it with the spirit of the age, that until the first of July, in this year, it would be possible in the State of Illinois, for creditors to imprison a certain class of debtors for life; to inflict upon them a punishment fully as long as that which is meted out to the large majority of murderers. And yet such was the fact.

The case, the facts of which are here given, was the means of wiping from our statute books the law which was liable to be used with such result.

In the fall of 1878, the United States Express company received from one of the Chicago banks a package containing $14,000 in currency, to be delivered to the Mathieson and Hegeler Zinc Company, at LaSalle, Illinois. The package was given by the company's agent at LaSalle, to Heman B. Chapman, who drove their delivery wagon, to be by him delivered to the Zinc Company.

The Zinc Works were located outside of the city of LaSalle, and the road leading to them at one place, passes between high banks, and is, for some distance, concealed from the surrounding country. Here, it was claimed by Chapman, that he met three men, apparently coming from the Zinc Works, who, as he was passing them, suddenly jumped upon his wagon,

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and threw a rag saturated with chloroform over his face; and that when he had come to, he was lying in the wagon badly bruised, and the package of money was gone.

Chapman was indicted for embezzlement, and tried in the Circuit Court of LaSalle County, at Ottawa, Illinois, in December, 1878, and acquitted.

Some time after his release, he went West, and in the fall of 1879, was again arrested at the instance of the United States Express Company, brought from California to Illinois, and indicted for perjury alleged to have been committed on the first trial, in denying having taken the $14,000. He was tried in the Circuit Court of LaSalle County, in December, 1879, convicted, and sentenced to seven years in the penitentiary.

The evidence on the second trial was the same as on the first, with the addition of that of certain witnesses who testified to his having spent, and having had in his possession large sums of money, whilst in the Western States and Territories.

The inconsistency of the verdicts in these two trials is evident. Chapman could not be convicted of perjury except by proving that he had committed the crime of embezzlement, of which one jury had already acquitted him.

Of course we cannot pass upon the question of Chapman's guilt or innocence, and it would occupy too much space to give a detailed statement of the testimony. One jury acquitted him, and another convicted, and his old neighbors and acquaintances are equally divided upon the question. It will suffice to say, that he was convicted wholly upon circumstantial evidence; that no witness, as we are informed, ever contradicted Chapman in any detail of his story of how he was robbed. The additional testimony adduced at the second trial was mostly, if not all, that of detectives; a class of testimony, which on some occasions, has called forth severe strictures from the Supreme Court of our State.

But guilty or not guilty, matters little now. If the latter, the administrators of the law, as has sometimes occurred before, made a mistake in a matter of fact, which in no manner reflects upon the spirit of those enactments under which he was convicted. If the former, then Chapman expiated his crime;

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he received and underwent that punishment which the law has prescribed for the offense which he had committed against the public. He was a model prisoner, earned all the "good time" allowed by law, and at the end of four years and nine months, was discharged from the penitentiary.

And now we come to that portion of his case which has an especial interest, and which was the means of changing one of the laws of this State.

While he was in the penitentiary, the United States Express Company obtained a judgment in trover, by default, in the United States Circuit Court, for the $14,000 alleged to have been embezzled by him, and at the door of the penitentiary he was met by the U. S. Marshall, with a *capias ad satisfaciendum*, and by virtue of that writ was placed in the Cook County jail. Malice being the gist of the action, he could not schedule out, under the Insolvent Debtor's Act. The law allowed him to earn one dollar and a half each day by his imprisonment, to be applied upon the execution. His board was fifty cents a day, leaving one dollar to be applied upon the debt. The interest upon the judgment was $840 per annum, thus leaving him $475 deeper in debt at the end of each year. Regularly every week for more than 140 weeks did this corporation pay the board of its debtor, and he was bound to die in jail, if it had so willed.

Chapman has always denied the commission of the crime, and though the Express Company offered to let him go if he would confess his guilt, he has continued to assert his innocence even in the face of a life imprisonment. Numerous lawyers have at various times had their sympathies aroused in favor of the unfortunate debtor, and without fee or reward have endeavored to obtain his release, but without avail. Among them, Cyrus Bentley, Esq., and Frank Baker, Esq., now Judge of the Circuit Court. At last Chapman's pitiful story attracted the attention of Judge Charles S. Miller, now of Chicago, and formerly of LaSalle County, Chapman's old home. He drafted and had introduced in the Legislature, a bill, amending the law, so that even in cases where malice is the gist of the action, the Insolvent Debtor's Act can be taken

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advantage of at the end of six months imprisonment. The Express Company opposed the bill, but it finally passed.

Shortly after the amended law of the State took effect, Chapman's petition to schedule was presented to Wm. M. Luff, Esq., U. S. Commissioner for this Circuit. The United States Express Company by its agent and attorney, E. F. Bull, Esq., of Ottawa, Ill., appeared and opposed the petition.

Chapman was represented by Judge Charles S. Miller, Cyrus Bentley, Esq., and Edward J. Judd, Esq. It was claimed that the amended law could not apply to process issued before it was enacted, but the commissioner held otherwise, and Chapman was allowed to file his schedule. The truth of this was next contested by the Express Company.

As in the previous trials, testimony was introduced to show that Chapman had taken the $14,000 that had been intrusted to him by the Express Company, that he had had no opportunity to spend all of the same, and that consequently he must have a part of it under his control or in his possession. The commissioner held that all presumptions must be made in favor of the liberty of the citizen, and that the evidence did not show conclusively that Chapman had any property save the amount he had scheduled which was of less value than the exemptions allowed by law.

The Express Company prayed an appeal to the U. S. Circuit Court, but the commissioner, following the rule of law laid down in Ward v. The People, 13 Ill., 635, held that as the law conferring jurisdiction upon the commissioner, made no provision for an appeal, none would lie.

Thus Chapman finally gained his liberty, and was allowed to return to his wife and children, from whom he had been separated eight years, the last three having been passed in jail as a debtor.

To Judge Charles S. Miller is due, principally, the credit of having procured the passage of the amendments through the Legislature.

There still exists the right to imprison the debtor who can but will not pay, but where the debtor can not pay, he can no longer be kept in confinement at the will of the creditor.

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DEPARTMENT OF MEDICAL JURISPRUDENCE.

SCOTT HELM, M. D., EDITOR.

MEDICO-LEGAL SOCIETY OF CHICAGO.

The second annual meeting of this society was held in Parlor 44, Grand Pacific Hotel, June 4, 1887, President D. A. K. Steele presiding. There were twenty-one members present.

The minutes of the last meeting were read and approved.

The following gentlemen, having been recommended by the executive committee, were elected active members of the Society; Dr. C. D. Wescott, Dr. Henry F. Gradle, Dr. J. E. Harper and Dr. J. W. Niles of Chicago, and Dr. J. N McDonald of Hegewisch, Ill.

The president, Dr. Steele, made the annual report of the executive committee.

Dr. E. J. Doering gave notice of the following proposed amendment to Art. IV of the Constitution to be known as Section 4, which he filed with the secretary: "The society may elect by unanimous vote distinguished physicians, and lawyers to honorary membership. Honorary members shall be exempt from the payment of all dues and shall enjoy the privileges usually accorded to honorary membership."

According to the provision of the constitution, action on this proposed amendment will be taken at the next meeting of the society.

The report of the treasurer, Dr. E. W. Andrews, was read, and on motion of Dr. Doering was referred to an auditing committee of two. The chair appointed Eric Winters, Esq. and Dr. F. H. Martin to compose this committee.

The society then proceeded to the annual election, which resulted in the

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following named gentlemen being chosen officers for the ensuing year:

President, Dr. E. J. Doering.

First Vice-President, Dr. Boerne Bettman.

Second Vice-President, Eric Winters, Esq.

Treasurer, Dr. L. L. McArthur.

Secretary, Dr. Scott Helm.

The retiring President, Dr. Steele, then delivered the following valedictory address:

"Fellow Members:

"The Medico-Legal Society was organized May 15, 1886, barely one year ago, with an original membership roll of nearly one hundred persons, representing the medical and legal professions, of this city and vicinity. It had for its object the investigation, study and advancement of the Science of Medical Jurisprudence, the punishment of unprofessional and criminal practices by members of the medical and legal professions, the prevention of black-mailing, and the procuring of such legislation as may be necessary to secure the ends above enumerated.

"As its inception and successful organization was chiefly due to the personal efforts of Dr. E. J. Doering, I felt that he should have been your first presiding officer and guiding genius, but his firm declination of the intended honor on account of other important official duties as President of the Chicago Medical Society, compelled you to postpone his election until this year.

"Placed in this position, therefore, quite unexpectedly and unsolicited, I assumed its duties and responsibilities with a considerable degree of reluctance, and with grave misgivings as to my ability to carry out the aims of the society with satisfaction to a large and exacting membership.

"The first year of the society has been an uneventful one. The attendance upon our meetings has not been as large, nor the numbers of persons presented as numerous, as our membership would warrant.

"Immediately after our organization the executive committee decided not to take cognizance of any suit brought against a member for alleged malpractice, where the cause for action at law occurred prior to his becoming a member of this society. You very kindly and unanimously indorsed this action at your first quarterly meeting. The object of this resolution is self-evident, and the wisdom of your executive committee in securing its passage, has been demonstrated during the investigation of a number of cases brought to their attention throughout the year.

"The society has not been called upon to espouse the cause of any de-

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fendant in an alleged malpractice case during the year. Neither have we expended any of the funds in the treasury for legal services, as we did not deem it to be good business policy to retain counsel for the society until we had some need of his services. Unofficially we have been consulted in a number of instances in regard to suits pending against members of this society which could not be otherwise considered.

"Death has removed from our membership roll the name of Dr. James Stewart Jewell, one of the most distinguished alienists and neurologists in this country.

"His name is familiar to medical readers everywhere, by reason of his scientific attainments in that department of medical science to which he devoted his rare talents with indefatigable zeal. A few months before his death, I called on him at his office to request him to prepare a paper for this society. As he came into the room his wan appearance and feeble gait caused me to regret stating the object of my call, but I did so, and at once the old enthusiastic light of the student and scholar brightened his eyes and animated his voice, as he cheerfully assented, provided his health should permit, and, in his usual calm, deliberative way, he told me that for some time he had been contemplating the subject of preparing a paper on a medico-legal topic. He wrote and handed me the title on a card, which is now in my possession. "Critical Examination of Certain Fundamental Points in Medical Psychology as they relate to Insanity before the Law." I shall always remember this interview as it was the last time I ever saw our late distinguished member. The end soon came, depriving the society of all but the title of the promised paper.

"One of our best known members, belonging to the legal profession, has been advanced to a prominent official position, and will soon adorn the bench. I refer to the Honorable O H. Horton.

"I regret the small membership of lawyers in this society, and trust that through the personal efforts of members the number may greatly be increased, so as to render it a more distinctly representative scientific medico-legal society. In order to induce a larger membership of lawyers, that clause in our constitution relating to assessments for unusual expenses in defending suits brought against physicians, was amended so as not to include lawyers.

"I desire to express my indebtedness to Clark Bell, Esq., President of the New York Medico-Legal Society, for several valuable reprints of papers read and copies of the transactions of their society, journals sent,

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invitations to banquets, and request to participate in the formation of an improved nomenclature for nervous diseases, etc. Also to Dr. A. B. Stuart of Santa Rosa, California, for letters and papers received through Dr. Doering, relating to the formation of a medico-legal board by the State Medical Society of California, together with a full report of the celebrated case of Winters v. Graves, which has attracted such wide attention.

"Fortunately, during the past year, your executive committee has had but little work to perform, but as the success of the society, and the continued confidence of its members in the necessity for its existence, rests largely upon the selection of men of acknowledged ability, fairly representing the different departments of medicine, therefore due care should always be exercised in this direction to have law, medicine, surgery, ophthalmology and otology, obstetrics and gynecology, represented on your executive board.

"Continued efforts to secure papers on suitable topics are necessary, and I feel certain that I may be allowed to congratulate you on your good fortune in securing as your president for the ensuing year, Dr. E. J. Doering, who by his ability and industry contributed so largely to the success of the Chicago Medical Society during the past."

In closing, Dr. Steele paid a glowing tribute to the president elect, and appointed Dr. Schaefer and Dr. Earll a committee to escort Dr. Doering to the chair.

Mr. Winters, on behalf of the auditing committee, reported the accounts of the treasurer correct, and suggested that a copy of the same be filed with the secretary. In accordance with a motion made by Dr. H. T. Byford, the report of the committee was unanimously accepted.

The report of the committee appointed at the last meeting to take action on Dr. Sawyer's paper on the "Defects of the Present System of Coroner's Inquests," was deferred until the next meeting. Adjourned.

SCOTT HELM, Secretary.

THE ACT OF THE LEGISLATURE OF ILLINOIS, IN FORCE JULY 1ST, 1887, RELATING TO THE PRACTICE OF MEDICINE.

Acts of the Legislature engineered through that body by a State Board of Health and affecting the practice of medicine, are not apt to meet with the very gracious approval of the medical profession. Though ac-

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customed to the use of bandages, they prefer to have them used upon others than themselves, and look with scornful contempt upon anything that has the appearance of "red tape." Thoroughly hostile to all systems of quackery they are willing that itinerant vendors of drugs should be charged roundly for the privilege of vending their nostrums; but to put any restraint upon an average practicing physician, is an affront to his code of ethics and an unnecessary lowering of his professional dignity to that of the "Professor who cures all diseases pertaining to humanity."

Justly, however, practicing physicians complain not so much of the law relating to the practice of medicine, as they do of the manner of its enforcement. They feel that their own standard is raised by the weeding out, and the vigorous punishment of all those who attempt the practice of medicine, never having studied its rudiments but for the purpose of personal gain, and who entrap the gullible public into trying their mixtures. But they complain that notwithstanding their desire in this behalf; societies organized by reputable physicians, with that as one of their objects, do not meet with any support from the State Board of Health, to which the Legislature has seen fit to entrust the prosecution of those who are not regularly practicing physicians, and that prosecutions instituted by such societies have thereupon been futile. This claim in certain instances has been well founded, the excuse given by the State Board of Health being, that they are without funds to carry on such prosecutions.

This excuse may have had in it in the past a semblance of truth. The first act of the Legislature passed in Illinois in reference to the practice of medicine, was passed ten years ago. The present act is virtually the same as the act of 1877, except as to the matter of the complete organization of the State Board of Health, for the purpose of carrying out the provisions of the act and the increased fees required to be paid by applicants desiring to practice medicine in this State.

It is this complete organization of the State Board of Health for this purpose, and the increased amount derived from the fees provided for in the act, that will enable the State Board to enforce its provisions.

More ample provision is made in the recent act of the Legislature for the punishment of practicing without the certificate required to be issued by the State Board of Health, than in the first act, and good faith upon the part of the Board will require the enforcement of those penalties.

Under this act of the Legislature, the right appropriation of the increased fees derived from the issuing of certificates to reputable phy-

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sicians, and from the examination of candidates, not graduates of medical institutions or licentiates, together with fines collected from the prosecution of offenders under the act, would establish a sinking fund sufficient for the prosecution of every offender, and for the consequent assurance that only those were allowed to practice medicine who were qualified by previous education. The members of the medical profession would willingly pay their fees for certificates, if their money was to be used for this purpose, and would willingly support the State Board of Health in any attempt to enforce the law. They would then contemplate with pleasure the elevation of their profession by means of legislative enactment.

Notwithstanding the view taken by the medical profession, that acts of the Legislature regulating the practice of medicine are hollow mockeries, this act must in one respect at least benefit that profession. The requirement that all persons applying for leave to practice medicine in this State, shall either be graduates of a legally chartered medical institution in good standing, or have passed a satisfactory examination before the State Board of Health, if rightly enforced, will bring about this benefit. Vigorous examinations by a thoroughly organized official board, will be looked upon with feelings of dread by those applicants who have but a smattering knowledge of the rudiments of medicine, and the thorough training of well established medical colleges will be more in demand. This will enable those institutions to uniformly raise their standard of requirements, and a liberal education, recognized as of great value to every professional man, will be more than ever appreciated by the average student of medicine. The more the State Board of Health can do toward bringing about the thorough education of those intending to practice medicine, the higher will they raise the standard of the medical profession, and the more surely will they receive its hearty support.

The power given to the State Board of Health, both by this and the first act of the Legislature, to refuse certificates to those guilty of unprofessional and dishonorable conduct, and to revoke certificates for like causes, if judiciously exercised, will do much to elevate the standard of the medical profession.

The provision allowing appeals to the Governor of the State from the dicisions of the Board, will insure fair treatment, not only for the complainant but for those accused of unprofessional or dishonorable conduct.

It is hoped by the State Board of Health that this act will be of benefit to the medical profession, and no doubt it was in the mind of the Legislature that it would help the general public. It is hoped that there may be a hearty co-operation on the part of the State Board of Health and the reputable members of the medical profession, to enforce the provisions of the act, and not compel any citizen of the commonwealth who is a victim to the ills and pains that flesh is heir to, because of quackery being abroad in the land, to take advantage of the liberality of the Legislature, and "throw physic to the dogs," or take the old woman's domestic remedy that "can't do any harm if it don't do any good."

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EDITORIAL NOTES.

THE PHILLIPS CASE.—This case, a full history of which was given in the last number of the TIMES, and which was then supposed to be near its end, still drags its slow length along.

Application has been made to re-instate the case of Phillips v. The South Park Commissioners, which has been refused by the supreme Court of the State, and the writ of error continued.

In the meantime, the appeal of the Commissioners from the decision of Judge Tuley, on the assessment of Mrs. Phillips' damages, is pending in the Appellate Court.

Probably there never was a case where the testimony as to value, took so wide a range, varying from a few hundred dollars up to twenty thousand dollars per acre. The reason appears to be that some of the witnesses only looked at what the land was worth for agricultural purposes. But the Supreme Court had held that in valuing land thus situated, many other things could be considered—what other land near or contiguous was held at—the proximity of a town or city, the growth and prospects of such town or city, etc.

The final decision in the case of the appeal on the question of damages, together with the decision upon the writ of error in the Supreme Court will probably close the history of one of the most remarkable litigations in this country.

POLITICAL STATUS OF WOMAN.—The writer of the article on this subject, which appears in this number of the TIMES, desires to acknowledge his indebtedness to Mrs. Matilda Joslyn Gage, one of the editors of "History of Woman Suffrage," a lady of great industry and research, for directing his attention to many of the facts of early English history.

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NOTES OF TRAVEL IN RUSSIA.

St Petersburg—Moscow—Warsaw—The Russian People and Government.

On the 30th of July, 1885, having had my passport viséd by the American Consul, at Stockholm, I left that city on a Russian vessel, for St. Petersburg.

The view of Stockholm, as the vessel steamed slowly down the river, or harbor, for the river had now become an arm of the sea, was very beautiful. The course lay near the shore for a long distance. The views from the boat were quite pretty, and there were occasionally handsome suburban residences; but the soil was manifestly unproductive. It was rocky, and covered, generally, like much of the country on the line of the railroad from Trondhjem, with a small growth of evergreen timber.

Early the next morning we approached the coast of Finland. During the day we arrived at Aabo, in Finland, a beautiful city of 23,000 inhabitants. Here the baggage was examined by the custom-house or police officers, who also searched the vessel very thoroughly.

The next day, August 1, we stopped at Helsingfors, the capital of Finland. This is a handsome city of fifty to sixty thousand inhabitants. There are two very beautiful churches, of entirely different styles of architecture. The one represents the established religion, Greek Catholic; the other the Protestant Lutheran. Every latitude is allowed to other religions, but none whatever to sects or schisms within the Greek church itself, of which, in Russia, the emperor is the head.

From a Russian officer on board, I learned that the government pays its soldiers, besides clothing and rations, three rubles per annum, which, at the value of the ruble at that time, about 50 cts., would be one dollar and fifty cents per annum. When the ruble is not depreciated it would be two dollars and fifty cents. In Paris I was told by a French soldier that their pay was a sous per day, which would be three dollars and sixty-five cents per annum.

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Fort Sveaborg, at Helsingfors, was very strongly fortified, but the fortifications were light compared with those at Cronstadt.

About 2 P. M., on the second day of August, we were steaming into St. Petersburg. The view from the vessel was rather beautiful, but the city is very flat—as flat as Chicago. The church of St. Isaacs loomed up in the distance, with its large, gilded dome, and as we pssed down the river, a long line of handsome business buildings came prominently into view.

St. Petersburg is well built up of stone and brick, and the streets, like those of most of the European cities, are neat and clean.

From the predilection of the Russians for dark colors in other things—ships, cars, soldiers' clothing, etc.,—I had expected to find dark buildings; but was agreeably disappointed. On the contrary, nearly every shade of light color is represented, giving the city a lively appearance. Much of it resembles the newly built portions of Rome and Copenhagen, and is not unlike New York and Chicago.

An American, traveling in Russia, will do well to take British gold or its equivalent, but he will do still better to take American gold, as he will soon find that the financial credit of his own country is better in St. Petersburg, than that of any other nation. It is a favorable time to travel in that country, while the Russian money is depreciated, since the cost of living and traveling has not risen in proportion, if indeed, it has risen at all. Railroad fares are substantially the same that they were when the ruble was worth 60 per ct. more.

The St. Isaacs is a magnificent cathedral. It is said to have cost 25,000,000 rubles. It is, perhaps, furnished inside as costly as St. Pauls, or St. Peters, but in a different way. Instead of statues, and costly architectural adornments, we have here, gold and silver, precious stones, and even diamonds. The Admiralty building is 1,500 feet long, and is a handsome and imposing structure.

The "Hermitage" is the principal museum. The statuary is meager; but there is a fine collection of paintings, and in gold, silver, precious stones and diamonds, and in gold and silver ornamented articles, as well as in the splendor of the furniture, it is not excelled, perhaps, by any museum in the world.

One of the principal attractions is the colossal statue of Peter the Great, representing the Emperor on horseback, riding up a huge rock. It was erected in 1782, and is to be seen in Alexander Park. The transporting and erecting of the statue cost about 500,000 rubles.

My passport had to be many times examined and visèd, when approach-

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ing the city, and while there; but the officers were uniformly courteous and kind, strongly in contrast with some on the continent, further south. For a few days, in the early part of August, the weather was very warm in St. Petersburg, and the sidewalks would glare oppressively upon one as he passed over them, but after a rain, the atmosphere became delightfully cool and invigorating.

The statue of Nicolas I, near Isaac's Church, is a grand work of art. It is a colossal figure on horseback, on a very beautiful monumental pedestal. The lower part is of gray marble; then comes the red granite, and the blue-red Onega quartz; then white marble toward the top. There are reliefs and four female figures. Also carved figures representing the granting of freedom to the serfs.

Among other public statues, is one of Catharine II.

On the 16th of August, people were appearing on the street in their overcoats, indicating that the short summer was already over. It is usually coming to a close in the latter part of this month.

August 17. Visited the American Consul, or attempted to do so. The Consul was gone, and I was obliged to use what little Russian I had been able to get hold of, as the only person in attendance was a Russian, who could not speak a word of English. Nor was there any American flag. There is something radically defective in our consular service. The Consul in Christiania was a Norwegian, who had occupied the position many years. The Consul at Stockholm was a Swede, who charges Americans for viséing their passports, and the Consul at St. Petersburg, when I succeeded in getting into his office, was found to be represented by the Vice Consul, who was an Englishman. It would be better to have our consulships filled by Americans, even should it be necessary to give them a bonus for accepting the positions.

Was more successful in calling upon the American minister, Mr. Lothrop, who was found to be a dignified, courteous gentleman, a fair representative of our country.

I like the Russians. They are intelligent and enterprising, courteous and kind—a warm-hearted, generous people. Should a foreigner inquire the way to any place he is seeking, the Russian, of whom he inquires, shows no anxiety to get away from him. On the contrary, he is even solicitous to make himself understood in giving the requisite information.

On one occasion, I saw a lady of refined appearance and noble bearing, richly dressed, stop in her walk, and help an old, palsied man down the steps of a bridge, as tenderly as if he were her own father, though it was

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evident he was no acquaintance, since she spoke not a word during the time. Such acts of kindness have I not seen in other countries.

Peterhoff, the summer residence of the Emperor, some 20 miles or so from St. Petersburg, resembles Versailles, but it is in every respect inferior.

The Russian is very devout. He stops and crosses himself in passing a church or capella, (a small chapel richly ornamented), and if he is excessively pious, he does the same while passing a priest.

On the 21st of August, left St. Petersburg, on the train for Moscow. On the line of the railroad there were some neat houses and cottages. Once in a while one painted green. Fields of grain were being harvested. The country was quite level. Much of the land was covered with small bushes, such as may be seen on the marsh land in America. But it was not marsh land.

Moscow is a grand city in some respects, with many large churches and other fine buildings.

The Kreml or Kremlin, as it is called, is the great attraction of Moscow. It consists of a cluster of splendid buildings, churches, arsenal and other public edifices. They are located upon a high plateau, and from this place the view of the city with its public buildings, and its 400 churches, many of them with large, gilded domes, glittering in the sun, is magnificent in the extreme. I never tired visiting the plateau, and taking a view of the city, which each time seemed more splendid than before.

The country from Moscow to Warsaw, is somewhat similar to that from St. Petersburg to Moscow, but it is more cultivated. The trees are larger, though not so numerous.

We passed through Smolensk, crossed the Dnieper river, and soon were traveling through a very handsome country. There are large fields under cultivation, and villages of one-story houses, with steep roofs, covered with hay.

These are the habitations of the peasantry, former serfs, who were freed by Alexander II, father of the present Emperor, Alexander III. They are now at work for themselves, each having a small farm, which the imperial government has assisted them to obtain. They are at work in the fields, men and women, ploughing, dragging, sowing, digging potatoes, etc. The Russian farmer wears a cap and gown.

As we proceed the fields grow larger, until the whole country appears to be under cultivation. There are a few groves—no fences. The country is mostly level; a good deal like our Western States.

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Warsaw has the reputation of being a beautiful city. It must be because of its magnificent parks, and of the fine views of the Vistula river, from various elevated places in the city. So far as the architecture is concerned, it is of quite an inferior character.

Russia has a strong grip on Poland. Since 1814, Poland has been in the continuous possession of Russia. In 1830 and in 1863, attempts were made to obtain independence, but they were unsuccessful. Since the latter date the chains have been gradually tightened, until to-day it is in a more hopeless condition than any other nation that aspires to a separate political existence.

Ireland, notwithstanding all the oppression of which it complains, is represented in the British Parliament. Poland has no representation, not even in the local legislature. Not only the governor and the local parliament, or legislature, but all the subordinate magistrates are Russian. Everything—judges, postmasters, justices of the peace—everything. Even the police of Warsaw consists of Russians, sent from Russian cities.

The use of the Russian language is enforced by various regulations. The Polish language may be taught in the schools, but the instruction must be given in Russian. Every business sign must have the corresponding Russian words by the side of it, or underneath. To enforce these and other regulations there were, as the Poles said and believed, 200,000 Russian soldiers in Poland, 60,000 of them in and around Warsaw. The people are taxed very heavily.

The National Bank of Poland, the last pride of the people, was then, in 1885, undergoing a change. The officers, who had all been Poles, were being displaced and Russians substituted, and the name was to be changed from "Bank Polski," to "Agency of the Imperial Bank of Russia."

C. B. WAITE.

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BOOK REVIEW

A TREATISE ON CONSTITUTIONAL CONVENTIONS; THEIR HISTORY, POWERS, AND MODES OF PROCEEDING. BY JOHN ALEXANDER JAMESON, LL. D., LATE JUDGE OF THE SUPERIOR COURT OF CHICAGO. FOURTH EDITION, REVISED, CORRECTED AND ENLARGED. CHICAGO: CALLAGHAN & CO., 1887. —This work is too well known to our readers to need any commendation from us. The publisher, in the fourth edition just issued, has presented a beautiful volume of nearly seven hundred pages, executed in the highest style of the art.

The author states, in his preface, as the occasion of publishing the work, that in 1862, certain influential members of the Illinois Constitutional Convention, then in session, set up for that body, in debate, a claim of inherent powers which he considered excessive, and the exercise of which might be dangerous. That at the same time rumors were current throughout the State, that there were in that Convention, seeking to control it, many members of a secret organization supposed to be disloyal to the Union, called the "Knights of the Golden Circle." Alarmed at this state of affairs, the author thereupon commenced a study of the Convention as an American institution, from its foundation and in all its aspects and relations, with a view to ascertain whether the claim of power referred to was warranted either by history or by constitutional principles.

The scope of the work may best be seen by a summary of the contents, as indicated by the following titles:

Chapter I. Of the various kinds of Conventions.

Chapter II. Of Sovereignty.

Chapter III. Of Constitutions.

Chapter IV. Of the Requisites to the Legitimacy of Conventions, and of their History.

Chapter V. Of the Organization and Modes of Proceeding of Conventions.

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Chapter VI. Of the Powers of Conventions.

Chapter VII. Of the Submission of Constitutions to the People.

Chapter VIII. Of the Amendment of Constitutions.

There is also an appendix, a very valuable portion of which consists of a list of all the Conventions thus far held in the United States. It is arranged in tabular form, giving the name of the Convention, the date of assembling, the date of adjournment, and remarks.

The subjects discussed in this work are of the very highest importance, and the information contained in it is invaluable to the profession. The views of the author, though no doubt generally correct, must, especially when unsupported by other authority, be subjected to the criticism of a bar at once generous and exacting; generous in the acknowledgment of merit wherever found—exacting in requiring every literary effort in the profession to conform to the fundamental principles of justice and right upon which all law is based, as well as to accord with the great minds by which, in every age, those principles have been expounded.

On the suffrage question, than which none other is of more practical importance to the American people at the present time, the author gives his views as follows:

"Which, then, is the true theory of the suffrage? Is its exercise that of a natural right, or is it merely the performance of a duty, resting simply upon positive law? The answer to this question can be based only upon presumptions, and judging by them, suffrage is not a natural right. In the first place, there is the presumption arising from the fact, that no political community has ever existed in which the right to vote has been conceded to be the natural right of all the citizens. I mean, conceded, not as a matter of speculation, but as one of practical administration. This is believed to be true in the ancient democracies, as it has been in those modern governments in which circumstances have enabled their founders to carry into effect most perfectly the theory of equal rights. In the cabin of the May-flower it was the Pilgrim fathers, not the Pilgrim mothers, who framed the first puritan commonwealth. In the second place, there has never been an instance, it is believed, in which a State, whatever its theories of the suffrage may have been, has not somewhere drawn a line of exclusion from its actual exercise, and drawn it, too, above the point which marks the extreme limit of practicability. In other words, no commonwealth, based upon popular suffrage, or admitting its exercise at all, has ever allowed it to the utmost extent that was practicable under the circumstances. Finally, suffrage, considered as a natural right, would be universal suffrage; and universal suffrage is an utter impracticability. For, admitting the force of the argument which attributes, by the law of

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nature, an equal right to vote to every citizen, nevertheless, when the statesman comes practically to establish the right, insuperable difficulties arise. Some are too weak or too young to exercise it at all, or with the requisite intelligence. A line must be somewhere drawn. Where it shall be drawn is a question of expediency, to be determined by the existing government, like any other measure involving mixed questions of justice and of policy. The principle of exclusion being once established, whether it shall be confined to considerations of age, or be extended to those of sex or social condition, is a matter of practical detail, to be settled by the political power.

"The 'right of suffrage' comes thus to be practically only a right of one man to represent many other men. Overlooking the absurdity of such a right, if asserted as a natural right, it comes at once into conflict with another right existing equally by the law of nature—the right of the State to determine who shall and who shall not discharge a function, which not all citizens can discharge. But a right of one man to do that which another has an equal right to prevent him from doing, is either a solecism, or it is a right which subsists only upon conditions to be determined by that other; in other words, a right which is such only when it rests on some positive law ordained by that other.

"Thus viewed, it is evident, that in the present condition of mankind, in which, for the public good, the principle of exclusion must be exercised, there is no such thing as a right of suffrage. Suffrage is not a right at all; it is a duty, a trust, enjoined upon, or committed to, some citizens and not to others. The only rights connected with the exercise of the suffrage, are, first, the right of the commonwealth, the collective body to be administered, for good or for evil, by the electors, to determine who those electors shall be; secondly, the right of every citizen, without distinction, derived to him through the commonwealth, to be fairly and adequately represented by the electors.

"The conclusion at which I arrive then is, that a Convention may, by constitutional provision, effect the disfranchisement of existing electors."
(Constitutional Conventions, §§. 336, 337.)

In the first place, the author has entirely ignored the real issue in this country, which is, whether or not suffrage is a right of citizenship, under our form of government; confining himself to an antagonism of the abstract right of suffrage.

But let us see how the matter stands under the issue as he has chosen to make it.

There are some modern writers who agree with the author of this work; but for our part we have great respect for the political opinions of James Madison, Thomas Jefferson, Benjamin Franklin, Alexander Hamilton and Thomas Paine, all of whom, as well as nearly every other of the eminent

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founders of our government, held suffrage to be a right, as did also Chief Justice Holt, Granville Sharpe, Hooker, Locke, and other eminent jurists and writers in Great Britain.

Blackstone, from whom we have all taken our first lessons in the law, in commenting on the property qualification in England, explained that it was adopted for the purpose of excluding the poor, who were supposed not to have a mind of their own. He then adds:

"If it were probable that every man would give his vote freely and without influence of any kind, then upon the true theory and general principles of liberty, every member of the community, however poor, should have a vote in electing those delegates to whose charge is committed the disposal of his property, his liberty and his life." (Commentaries, book I, p. 171.)

He then compares the system of England with that which prevailed in Rome, where suffrage was based, at one time mainly upon property, at another, principally upon numbers; and while he gives the preference to his own country, he says:

"This is the spirit of our constitution; not that I assert it is in fact quite as perfect as I have here endeavored to describe it; for if any alteration might be wished or suggested in the present frame of parliaments, it should be in favor of a more complete representation of the people."

In the United States, the limitation which prevailed in England at the time when the learned jurist wrote, is removed. It is conceded, in this country, that the poor have a mind of their own, and should not be disfranchised. The alteration in the frame of the legislative assemblies which Blackstone suggested a desirable, has taken place, and there is now "a more complete representation of the people;" and a change similar though not so radical, has taken place also in Great Britain. The authority of the great commentator stands good, therefore, in favor of the right of suffrage, based upon "the true theory and general principles of liberty."

"Every member of the community, however poor, should have a vote in electing those delegates to whose charge is committed the disposal of his property, his liberty and his life."

The author of the work before us says, the answer to the question whether suffrage is the exercise of a natural right, or merely the performance of a duty, can be based only upon presumptions. This is certainly a superficial view of the matter. The question goes much deeper than that. It pertains to the nature of government, and especially of a

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republican form of government, and must be determined, not by any weighing of presumptions, but by a critical analysis of the relation which the individual bears to the State.

The first presumption which he considers, arises from the fact, that no political community has ever existed in which the right to vote has been conceded to be the natural right of all the citizens. That is, as he explains, not as a matter of speculation, but as one of practical administration. Of course not. As a matter of practical administration, no political community has ever existed, in which a child, as soon as born, is carried to the polls, and made the instrument of depositing a ballot in its own behalf. And yet the child, as soon as born, is a citizen. But really, is this a suitable argument to make use of on so grave a subject? By a parity of reasoning, it can be shown that there is no such right as that of personal liberty. Because no political community has ever existed in which a child has been left entirely free to follow the first prompting of its inclinations.

The child has, nevertheless, both the inchoate right of personal liberty and the inchoate right of suffrage; both to be exercised when he shall have arrived at years of discretion. The State may fix the age of discretion, provided always that the time is a reasonable one. But there are some things the State may not rightfully do. The State has no right to authorize the child to vote at the age of seven, because that would be a grevious wrong to the balance of the community. The State has no right to postpone the time of voting to forty, because that would be a great wrong to the citizen himself, and would deprive him of the right, which he has, in common with other citizens, to participate in the government of which he is a constituent member.

The author says, "In the cabin of the Mayflower it was the Pilgrim fathers, not the Pilgrim mothers, who framed the first puritan commonwealth." This fling at woman suffrage loses much of its force from the fact that in the first puritan commonwealth, only church members could vote. If in the early government of New England, women were excluded from the suffrage, so were nearly three fourths of the men. If that is a precedent against the right of the women to vote, it is equally a precedent against the right of any but church members to vote.

"In the second place," says the author, "there has never been an instance, it is believed, in which a State, whatever its theories of the suffrage may have been, has not somewhere drawn a line of exclusion from its actual exercise, and drawn it, too, above the point which marks the extreme

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limit of practicability. In other words, no commonwealth, based upon popular suffrage, or admitting its exercise at all, has ever allowed it to the utmost extent that was practicable under the circumstances."

This, though stated as being in the second place, is a mere restatement of the first proposition. Of course the line of exclusion must be drawn above the point which marks the extreme limit of practicability. For instance, in the case of the minor, the State, for the sake of uniformity, fixes the age for voting at twenty-one. The extreme limit of practicability would permit many to vote several years earlier. But twenty-one is not an unreasonable age, and because it is not unreasonable, the State has a right to fix it. Having done so, the citizen has no right to vote earlier. He has had the inchoate right to vote, ever since he was born; but he has been waiting to exercise the right, until time should bring him within that reasonable regulation which the State had a right to make.

"Finally," says the author, "suffrage, considered as a natural right, would be universal suffrage; and universal suffrage is an utter impracticability."

This proposition, though stated as a third or final one, is substantially the same as the other two. The statement this time is somewhat varied and includes an assertion which is quite erroneous; that is, that suffrage considered as a natural right, would be universal suffrage. No writer on the subject ever advocated universal suffrage in the sense in which the term is here used; that is, the right of every individual citizen to vote. Blackstone, in the language already quoted, did not, by the phrase "every member of the community," intend to include infants. Nor does the one proposition by any means follow from the other. It may just as well be argued that the right of personal liberty is synonymous with the right of every individual citizen to have his liberty. But all cannot have their liberty; some must be in prison; therefore there is no such thing as a right of personal liberty.

The author admits the force of the argument which attributes, by the law of nature, an equal right to vote to every citizen. But whether he intends to make this admission absolutely, or only for the sake of the argument, is not clear. We will not, therefore, predicate too much upon the fact of his having made the admission.

He says some are too weak or too young to vote at all, or with the requisite intelligence. A line must somewhere be drawn. Where it shall be drawn is a question of expediency. "The principal of exclusion being

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once established, whether it shall be confined to considerations of age, or be extended to those of sex or social condition, is a matter of practical detail to be settled by the political power."

Here comes the same original proposition, in still another form. Every time it appears, though clothed in different language, it is, in the last analysis, a mere statement of the author's side of the question; a petitio principii, an assuming of the truth of his position, and a reiteration of it. No reason is given, founded upon the nature of things, or upon the relation of the citizen to the State, why it should be so. It is here assumed in the final statement, that because the State must draw a line somewhere, it may draw it where it chooses. That does not follow. The line must be drawn through a point which lies within the plane of reason.

If that is not so—if the State, meaning the legislative or delegated power of the State, may draw the line where it chooses, then it can disfranchise nine tenths of the community, and thus change the government from a republic to an aristocracy. This would be the exercise of a power fraught with as much danger as any thing to be apprehended from the Knights of the Golden Circle.

The author says expressly that the principle of exclusion may be extended to considerations of "social condition." Suppose, then, those who should get control of the political power, should confine the suffrage to those in the same social condition as themselves, and having drawn the line, in a circular form, continue, by successive legislation, to contract the circle?

But let us do the author justice. Though he has not yet advanced a single argument, nor attempted to do so—though all of his propositions, thus far, have been substantially but a repetition of his original assertion that suffrage is not a natural right, but is subject to the discretionary control of the State, he does undertake, further along, to make an argument. In order to see what it is, and to appreciate the force of it, it will be necessary again to quote one paragraph entire.

"The 'right of suffrage' comes thus to be practically only a right of one man to represent many other men. Overlooking the absurdity of such a right, if asserted as a natural right, it comes at once into conflict with another right existing equally by the law of nature—the right of the State to determine who shall and who shall not discharge a function, which not all citizens can discharge. But a right of one man to do that which another has an equal right to prevent him from doing, is either a solecism or it is a right which subsists only upon conditions to be determined by

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that other; in other words, a right which is such only when it rests on some positive law ordained by that other."

Here then, finally, is a proposition, which is something more than a mere restatement of the one with which the author set out. It is prefaced by the assertion that the right of suffrage is "practically only a right of one man to represent many other men." Only that? What then becomes of the right claimed by the citizen to represent himself? The representation of others is merely incidental to the main claim, which is, the right of the citizen to represent himself.

Coming now to the solitary argument thus far made, the proposition is, that by the law of nature the State has the right to determine who shall and who shall not discharge a function which not all citizens can discharge. Let us see whether the State has such right, and how it came by it.

Who and what is the State? In a republic, how is the State to be distinguished from the citizens in their collective capacity? When the citizens are exercising the elective franchise, they are performing an essential act of self-government. They are the government to all intents and purposes, though their congregated agents are also sometimes called the government. We speak of the executive, legislative, and judicial departments of the government, but these go merely to make up the form of the government, the substance of which is in the people themselves. In a republic there is properly no such thing as a State, apart from its citizens.

What does the author mean by the State determining who shall or who shall not discharge a function? What does he mean by a State, and what does he mean by a function? Is there not a sophism lurking under this specious language?

If the proposition is to have any distinctive meaning—if it is, as we have assumed, broader than the original one—if it is not, then it is a mere repetition again—if it is broader, then he means that the State, that is to say, the organized legislative or delegated power of the State, has a right to say who shall or who shall not discharge every function which all cannot discharge. But is this true? If the author be correct, the State, meaning the legislative power—for it is plain that he uses the term State as contradistinguished from its citizens—may say who shall fill the various offices; not merely designate the classes of citizens from whom the electors may select persons to fill them, but may absolutely designate who shall fill them.

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In the case of suffrage, the claim is, that the State may, in its absolute discretion, determine who shall vote, because voting is the discharge of a function which all cannot discharge. And if the claim be correct, the State could even designate the names of those who should, in any locality, exercise the elective franchise; as the Legislature of New York actually did, in certain localities, in 1645. The author does not look upon the suffrage as a right to be regulated, but as a duty or function to be performed when called upon by the State; and if that view be correct, the State would have as much right to call upon an individual to perform this duty as upon a class. In the exercise of the same power in another direction, the State, that is, the legislative power, could designate, independently of the electors, persons to fill any of the offices in the State; because the filling of an office and the performance of its duties, is "the discharging of a function which not all citizens can discharge." The Legislature could fill half the offices, and permit those whom it should determine upon or designate as electors, to fill the other half, or it could fill three fourths of them and leave the other fourth to the electors, or it could fill them all and dispense with the electors entirely. They would have no right to complain, since this was a mere function which they were to discharge in behalf of the State when called upon. They should rather feel thankful that they had been relieved from it, and could go about their business, while the "State," whatever that might mean, could discharge the function itself.

Such would be the result of the argument if the "State" is to be contradistinguished from its citizens. If the author admits the State or the governing power to be the citizens, then he concedes the whole argument; because if the citizens constitute the State, they have the right of suffrage. To say that the citizens constitute the government, and yet have not the right to participate in the choice of the agents who are to administer the government, is worse than nonsense.

We fail to discover in these paragraphs of the author any real sympathy with the masses, or any appreciation of the proper mission of a republic —the elevation of the great body of the people by throwing upon them the responsibilities of government, to be discharged by the judicious exercise of the suffrage.

The government is, in this treatise, or at least in this portion of it, looked upon as something apart from the people—something which they are to look up to and respect, on account of its superiority; thankful for any crumbs that may fall from the governmental table. They have no rights

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which the government is bound to respect; for, without the right of suffrage they have no guaranty for any other rights whatever.

Madison held it to be "indispensable that the mass of the citizens should not be without a voice," and Franklin declared that "they who have no voice nor vote in the electing of representatives, do not enjoy liberty, but are absolutely enslaved to those who have votes and to their representatives.

We think the writer of the present day who runs counter to these noble sentiments by asserting that "there is no such thing as a right of suffrage," incurs a grave responsibility.

The conclusion to which the author arrives, is consistent with his premises. It is, that a Convention may, by constitutional provision, effect the disfranchisment of existing electors. And he places no limitation upon this power. He does not say the disfranchisment may be effected for crime, or give any other cause or condition which may justify the action. The presumption is, that the Convention has an absolute, uncontrollable, irresponsible discretion in the premises.

Taking the author at his word, let us suppose the laboring classes and mechanics should combine and get up a Constitutional Convention, and disfranchise the professional class entirely. Would not the author then begin to think that suffrage was a right? Would he not be going into the courts to inquire by what authority certain classes of citizens had undertaken to disfranchise another class—by what authority and for what cause he had been divested of his rights? He would then doubtless soon become an ardent advocate of the right of suffrage, as inherent in the citizen, under a republican form of government.

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